

DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2016

WEDNESDAY, APRIL 29, 2015

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2:38 p.m., in room SD-124, Dirksen Senate Office Building, Hon. Lisa Murkowski (chairwoman) presiding.

Present: Senators Murkowski, Alexander, Cochran, Blunt, Hoeven, McConnell, Daines, Cassidy, Udall, Leahy, and Reed.

ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF HON. GINA MCCARTHY, ADMINISTRATOR

ACCOMPANIED BY DAVID BLOOM, ACTING CHIEF FINANCIAL OFFICER

OPENING STATEMENT OF SENATOR LISA MURKOWSKI

Senator MURKOWSKI. Good afternoon. We'll call to order the Appropriations Subcommittee on Interior, Environment, and Related Agencies. Welcome to all.

I apologize for our late start. I was in another appropriations hearing with the Secretary of Homeland Security trying to secure an icebreaker, so I'm sure that you would understand.

Administrator McCarthy and members of the subcommittee, thank you for your indulgence here this afternoon. We are here to examine the fiscal year 2016 budget request for the Environmental Protection Agency.

Administrator McCarthy, I appreciate the time that we were able to spend in my office last week talking about some of the priorities that I have. I think it was constructive dialogue, and I look forward to that today. I also appreciate your commitment to ask the Deputy Administrator to convene a senior Environmental Protection Agency (EPA) team to sit down with me and my staff to see if we can't make some progress on some of the issues that are outstanding, and some of them more high profile than others, but issues that are of significance to my State and important within EPA's operations.

Mr. Bloom, welcome to the subcommittee to you.

Today's hearing comes at a critical time for two of the EPA's most controversial proposals, the rulemaking to redefine what the EPA will regulate under the Clean Water Act and the proposed

rule for existing power plants under section 111(d) of the Clean Air Act.

The EPA's proposal to redefine what they will regulate under the Clean Water Act was recently sent to the Office of Management and Budget (OMB) for final review. It's expected to be released pretty soon. Just last week, Administrator McCarthy reiterated that the final power plant rule, which will require dramatic changes to our electricity sector, will be finalized by midsummer.

I am concerned, and I've expressed this to you, Administrator McCarthy, about these proposals. The EPA's proposal to change the definition of waters of the United States under the Clean Water Act has been described by some as a simple clarification, but in reality, the change will substantially increase the EPA's regulatory reach and will likely subject countless new projects to permitting requirements that I think will be very hard to satisfy.

Roughly two-thirds of the State of Alaska is already considered wetlands, and the rule has potential to engulf even more of our State. I have described the water rule as a potential showstopper for new development in Alaska. I continue to have serious concerns as we near the final rule's release date.

The EPA's efforts to regulate existing electric power plants will increase energy prices and negatively impact the economy in Alaska and throughout the United States. The same can be said about a companion rule addressing new power plants. And in spite of the fact that the EPA released a preemptive legal justification for its actions, there does remain a legitimate question about whether the EPA is acting outside its legal authority to enact this policy.

I am particularly concerned about the EPA's treatment of Alaska in the Clean Power Plan. Not only has EPA failed to present a clear rationale to support the application of this Clean Air Act proposal to Alaska, it even failed to evaluate the impacts of the proposal to the State. And this lack of analysis is very troubling, because we lack this interconnected grid that the EPA cites as the key to maintaining reliable and affordable electricity.

You have stated Administrator, that the final rule will include substantial flexibilities, but this is a really tough one for us. We're trying to figure out how, in Alaska, even with the level of flexibility, there could be a reasonable path forward. So again, this is an issue of considerable concern.

These are just two of the issues that are being brought to my attention on a consistent basis within and beyond Alaska. On a national level, I continue to hear about EPA's efforts on ozone, methane, and hydraulic fracturing. This is just a few of them. Up in the State, I'm consistently hearing a message that the EPA is overstepping in its appropriate role.

We touched briefly on a laundry list of issues that, while not receiving the same level of scrutiny as the Clean Water Act or the power plant rules, these are of tremendous importance, and we have to address them. We discussed the need to find a workable solution for small, remote incinerators that are the only option to deal with solid waste in some areas in the State and back up diesel generation concerns. We know that those continue to be an issue.

We agreed upon the need for a workable solution for the PM 2.5 problem in Fairbanks and to find a fix so that EPA can continue

to help. We have issues as it relates to back haul in our rural villages. We talked about the need to deal with our abandoned oil tanks, the contaminated lands, the sensible option to dispose of fish waste. Some of this is so very parochial, but these are issues that consume residents.

As I shared with you last week, Alaskans are ready to find some commonsense solutions to protect our environment, but we need the Federal Government to recognize some of the unique challenges that we face. So we're willing to work with the EPA to find solutions, but we need to be working and talking together.

When it comes to budget request, as I noted in all of the Interior Subcommittee hearings, the President's budget was written without regard to the spending limits that Congress is compelled to operate within. Because that's the case, the President's budget requests substantial funding increases for some programs that I believe are unrealistic given the budget environment.

The EPA's request is no different in that regard. The budget requests an increase of \$451 million, approximately 6 percent above the enacted level for fiscal year 2015, even though we don't expect to have substantially more money this year. We all know that. Beyond the overall increase, I'm concerned about the specific areas the budget request proposes to increase and to cut.

The budget requests approximately \$239 million to fund the President's climate change agenda. This is an \$80 million increase from last year's enacted. The budget requests money to hire additional attorneys to defend controversial rule makings that States and others argue are unlawful. It also requests additional money to expand a hydraulic fracturing study far beyond what Congress has envisioned when EPA was directed to study the topic 5 years ago.

At the same time we see these funding increases, the EPA proposes eliminating important programs to protect against radon exposure. This is the second leading cause of lung cancer behind smoking. And it proposes to reduce funding for grants to clean up some diesel emissions.

I would suggest some of the Agency's choices are troubling. It is my hope that this subcommittee will be able to find a way to fund on the ground clean-up work while reducing what many of us believe very strongly to be the agency's regulatory overreach.

Administrator, I thank you for being here today and for the very direct conversations that we are able to have on issues that are possibly and probably contentious. We've got to be working together to resolve them.

With that, I turn to my ranking member, and look forward to your testimony.

STATEMENT OF SENATOR TOM UDALL

Senator UDALL. Thank you, Chairwoman Murkowski, and good morning and welcome—or good afternoon. I'm a little behind here. Welcome, Administrator McCarthy. Great to have you here today, and thank you for joining us as we discuss the fiscal year 2016 budget request for the EPA.

This is a pivotal time for your agency. That's clear. You're talking on tough issues, environmental protection, air quality, water

quality, and climate change. It's also clear that many of these issues are controversial. But let's remember our landmark environmental laws, the Clean Air Act, the Clean Water Act, the Endangered Species Act, were controversial, too, but folks on both sides worked together, and they got the job done. I'm hopeful that we can do the same with bipartisan solutions that move us forward instead of using controversial riders that hold us back.

We need to make critical changes to improve the quality of air we breathe and the health of the environment. We can't wait another decade or two. I know making these changes won't be easy, but American innovation is legendary and limitless. In particular, I think it's time to channel that innovation into finding solutions to stop and even to begin to reverse the effects of climate change. So I'm pleased the EPA's budget request for fiscal year 2016 makes a bold statement about the need to address climate change and also the means to get there.

EPA's funding request for its work to stop climate change represents a 50 percent increase to the fiscal year 2015 level. The increase is overwhelmingly for grants to support the States to plan and implement new greenhouse gas standards and for providing vital technical support to States as they develop these plans.

I think EPA's emphasis on supporting States is remarkable. All the more so given that, over the past 3 years, EPA has just barely been able to avoid furloughs. During the past 2 years, most Federal agencies were finally able to start getting back to normal, normal business after years of budget cuts.

But EPA has still effectively been operating at the sequestered level, and this wasn't something new. EPA's budget has dropped 8 percent in real terms, and it lost 12 percent of its staff in the last decade. This concerns me a lot. EPA faces a tight budget for day to day operations, but I appreciate the agency is living within these constraints in order to prioritize its climate change work.

I also appreciate that the budget supports programs important to New Mexico, especially uranium cleanup on Navaho lands and a \$30 million increase for grants to revitalize brownfields. Yet I'm worried about some of the proposed offsets, especially eliminating radon grants, I believe Chairwoman Murkowski also mentioned that, and the 1.5 percent cut to State revolving fund (SRF) grants for clean water and drinking water, and I look forward to discussing those programs today.

Finally, yesterday, the Environmental and Public Works Committee reported bipartisan legislation to reform how we regulate the safety of chemicals. I think we did exactly what the American people have complained we don't do enough of in Washington, we sat down the Republicans, Democrats, advocates, and business. We worked together to find a common sense solution.

The legislation creates a predictable and transparent Federal system to regulate the safety of chemicals based on the latest science. It provides greater regulatory certainty to the chemical manufacturing industry and updates a 40-year old law that fails to protect the American people. The administration drafted helpful principles to guide effective reform of chemical management. We have followed those principles, and I think we've done a remarkable job.

I look forward to hearing from you, Administrator McCarthy, and to discussing these important matters today, and that's it. Thank you.

Senator MURKOWSKI. Thank you, Senator Udall. Let's go to you, Administrator McCarthy. Welcome to the subcommittee, and we'll look forward to your comments, and then we'll have an opportunity for questions. Welcome.

SUMMARY STATEMENT OF HON. GINA MCCARTHY

Ms. MCCARTHY. Thank you. Thank you so much, Chairwoman Murkowski, Ranking Member Udall, and members of the subcommittee. Thank you for the opportunity to appear before you to discuss the EPA's proposed fiscal year 2016 budget. I'm joined by the Agency's Acting Chief Financial Officer, David Bloom.

The EPA's budget request of \$8.592 billion in discretionary funding for the 2016 fiscal year provides the resources that are vital to protecting human health and the environment while building a solid path for sustainable economic growth.

Since 1970 when EPA was founded, we have seen, over and over again, that a safe environment and a strong economy go hand in hand. This budget supports essential work to address climate change, improve air quality, protect our water, safeguard the public from toxic chemicals, support community's environmental health, maintain core enforcement strength, support needed research, and work towards a sustainable future for all Americans.

Effective environmental protection is a joint effort of EPA, the States, and our tribal partners. We're setting a high bar for continued partnership efforts in looking for opportunities for closer collaboration and targeted joint planning and governance processes through efforts like E-Enterprise governance approach.

That's why the largest part of our budget, \$3.6 billion or 42 percent, is provided directly to our State and tribal partners. In fiscal year 2016, our requests include an increase of \$108 million for State and tribal categorical grants.

This budget requests \$1.1 billion to address climate change and to improve air quality. These resources will help protect those most vulnerable to climate impacts and the harmful health effects of air pollution through common sense standards, guidelines, and partnership programs.

Climate change is not just an environmental challenge. It's a threat to our public health, our domestic and global economy, and to our national and international security. The request supports the President's Climate Action Plan, and in particular, the Clean Power Plan which establishes carbon pollution standards for power plants.

In addition, the President's budget calls for a \$4 billion Clean Power State Initiative Fund to support State efforts to accelerate carbon pollution reductions in the power sector.

Protecting the Nation's waters remains a top priority for the EPA. In fiscal year 2016, we will finalize and support implementation of the Clean Water Rule, which will clarify types of waters covered under the Clean Water Act and foster more certain and efficient business decisions to protect our Nation's waters.

Recognizing the need for water infrastructure, the SRF and related efforts are funded at over \$2.3 billion, and we will work with our partners to help communities by focusing on issues such as financial planning for future public infrastructure investments and expanded efforts with States to identify financial opportunities for resilient drinking water, waste water, and storm water infrastructure.

The Agency recently launched the Water Infrastructure and Resiliency Center. It's a key component of our effort to expand our investment in water infrastructure.

We are proposing a multifaceted effort to help our communities. However, low income neighborhoods, rural communities, and communities of color need special assistance. This includes targeted funding and on the ground community assistance through EPA regional coordinators in a network of circuit riders. An investment of \$16.2 million will help local communities improve safety and security at chemical facilities and to prevent and prepare for oil spills. These efforts represent a shared commitment among those with a stake in chemical facility safety and security ranging from facility owners to first responders.

The fiscal year 2016 budget request will let us continue to make a real and visible difference to communities every day. It will give us a foundation to improve infrastructure across the country, and it will sustain State, tribal, and Federal environmental efforts across all our programs.

With this proposed budget, the President is not only sending a clear signal about the resources EPA needs to work effectively and efficiently with States and tribes to protect public health and the environment, it is also part of an overall Federal budget proposal that does not accept the bad public policy embodied and sequestration and does not hold back needed resources in non-defense spending in order to increase needed defense spending or vice versa. Instead, the President's proposed fiscal year 2016 budget finds a path forward to avoid sequestration and properly support both domestic and national security interests.

Madam Chairwoman, I thank you for the opportunity to testify, and I look forward to answering your questions.

[The statement follows:]

PREPARED STATEMENT OF HON. GINA MCCARTHY

Chairman Murkowski, Ranking Member Udall, and members of the subcommittee, thank you for the opportunity to appear before you to discuss the Environmental Protection Agency's proposed fiscal year 2016 budget. I'm joined by the agency's Acting Chief Financial Officer, David Bloom.

The EPA's budget request of \$8.592 billion in discretionary funding for the 2016 fiscal year starting October 1, 2015 provides the resources vital to protecting human health and the environment while building a solid path for sustainable economic growth. Since the EPA was founded in 1970, we have seen over and over again that a safe environment and a strong economy go hand in hand. In the last 45 years, we have cut air pollution 70 percent and cleaned up half of our Nation's polluted waterways. Meanwhile, the U.S. GDP has tripled, which shows that investments in public health and environmental protection are consistent with strong economic growth. Economic prosperity and quality of life depends on public health protection that ensures clean air; clean water; and safe, healthy land.

This budget will let us continue that trend. It funds essential work to address climate change, improve air quality, protect our water, safeguard the public from toxic chemicals, support communities' environmental health, maintain core enforcement strength and work toward a sustainable future for all Americans. Central to this

work is supporting our State, local, and tribal partners, working with them to deliver on our environmental and health improvements as a shared responsibility. We are doing this while supporting a strong workforce at the EPA with the tools necessary to ensure effective use of the public funds provided to us.

MAKING A VISIBLE DIFFERENCE IN COMMUNITIES ACROSS THE COUNTRY

We are focused on continuing our work with partners to make a visible difference in communities and across the country—especially in areas overburdened by pollution—including low-income neighborhoods, rural communities, and communities of color.

This budget proposes a multifaceted effort to enable communities of all sizes, rural and urban, to find needed assistance and support for capacity building, planning, and implementation of environmental protection programs. In fiscal year 2016, EPA will support this effort by providing targeted funding and regional coordinators to help communities find the best programs to address local environmental priorities. This budget also provides for a network of “circuit riders” to provide on-the-ground assistance to communities to build and strengthen the adaptive capacity and resilience to climate change. EPA will also support community revitalization and economic redevelopment by investing \$110 million dollars, an increase of \$30 million from last year, to plan, assess, clean up and reuse brownfields.

This request also includes an additional investment of \$16.2 million over our current resources to help local communities improve safety and security at chemical facilities, and to prevent and prepare for oil spills. This investment will improve compliance outreach to industry, emergency planning assistance to local communities, updates to existing guidance and regulations, and enhancements to software used by emergency responders.

The EPA will also work to limit public exposure to uncontrolled releases of hazardous substances and make previously contaminated properties available for reuse by communities through a request of close to \$540 million in the Superfund Remedial program and another \$191 million in the Superfund Emergency Response and Removal program, which is an increase of \$48 million across the two programs.

ADDRESSING CLIMATE CHANGE AND IMPROVING AIR QUALITY

The fiscal year 2016 budget request for the agency’s work to address climate change and to improve air quality is \$1.1 billion. These resources will help protect those most vulnerable to climate impacts and the harmful health effects of air pollution through commonsense standards, guidelines, and partnership programs.

Climate change is one of the greatest challenges of our time. Climate change is not just an environmental challenge, it is a threat to public health, to our domestic and global economy, and to our national and international security. The U.S. has already and will continue to shift the international discussion on climate change from one that focuses on mitigation costs to one that embraces new investment opportunities. If done right, we can cut the carbon pollution that is fueling climate change and position the business community, its entrepreneurs, and its innovators to lead the world in a global effort while at the same time, expanding the economy. States and businesses across the country are already working to build renewable energy infrastructure, increase energy efficiency, and cut carbon pollution—creating sustainable, middle class jobs and displaying the kind of innovation that has enabled this country to overcome so many challenges.

This request supports the President’s Climate Action Plan and makes climate action a priority. In particular, the Clean Power Plan, which establishes carbon pollution standards for power plants, is a top priority for the EPA and will help spur innovation and economic growth while creating a clean energy economy. The Plan gives States the flexibility they need to design and implement plans that reduce their carbon pollution while meeting the needs of their residents and businesses. The budget request includes an increase of \$25 million in direct grant support to States to establish the programmatic infrastructure necessary for effective implementation as well as resources for EPA to provide critical support to the States through technical assistance, developing guidance, modeling, and other tools.

In addition, the President’s budget calls for a \$4 billion Clean Power State Incentive Fund to be administered through a mandatory spending account to support State efforts to accelerate carbon pollution reductions in the power sector. This funding will enable States to invest in a range of activities that complement and advance the Clean Power Plan, including but not limited to direct investments and financing for renewable energy and energy efficiency programs; funding for low-income communities to address disproportionate impacts from environmental pollu-

tion; and assistance and incentives for businesses to expand infrastructure for innovative projects that reduce carbon pollution.

The President's Climate Action Plan also calls for greenhouse gas reductions from the transportation sector by increasing fuel economy standards. With input from industry and stakeholders, the EPA, working with the National Highway Transportation Safety Administration, expects to finalize Phase II greenhouse gas and fuel efficiency standards for heavy-duty vehicles. These standards will deliver significant savings at the pump, reduce carbon pollution, and reduce fuel costs for businesses while improving the efficiency of moving goods across the United States.

PROTECTING THE NATION'S WATERS

Protecting the Nation's waters remains a top priority for the EPA. We will continue to build upon decades of efforts to ensure our waterways are clean and our drinking water is safe. Water pollution endangers wildlife, compromises the safety and reliability of our drinking water sources and treatment plants, and threatens the waters where we swim and fish. In fiscal year 2016, we will begin implementation of the Clean Water Rule, which will clarify types of waters covered under the Clean Water Act and foster more certain and efficient business decisions to protect the Nation's waters.

Aging systems and the increasing impacts of climate change create opportunities for innovation and new approaches for drinking water and wastewater infrastructure. Building on the strong funding level of \$2.3 billion provided through the Clean Water and Drinking Water State Revolving Funds, \$50 million is included for technical assistance, training, and other efforts to enhance the capacity of communities and States to plan and finance drinking water and wastewater infrastructure improvements. The EPA will work with States and communities to promote innovative practices that advance water system and community resiliency and sustainability. Dedicated funding through the Clean Water SRF will advance green infrastructure design and practices such as incorporating permeable permanent natural structures, green roofs, and wetlands which can help cost-effectively meet Clean Water Act requirements and protect and restore the Nation's water resources.

In January 2015, the agency launched a key component of this expanded effort, the Water Infrastructure and Resiliency Finance Center. We will work with our partners to help communities across the country by focusing on issues such as financial planning for future public infrastructure investments and expanded efforts with States to identify financing opportunities for resilient drinking water, wastewater and stormwater infrastructure. We will enhance our partnership and collaboration with the U.S. Department of Agriculture on training, technical assistance, and funding opportunities in rural areas. The Water Infrastructure and Resiliency Finance center is part of the Build America investment initiative, a governmentwide effort to increase infrastructure investment and promote economic growth by creating opportunities for State and local governments and the private sector to collaborate on infrastructure development.

Separately, EPA will continue efforts to protect and restore ecosystems through its geographic programs. EPA and its Federal partners are making steady progress on reducing unexpended balances of Great Lakes Restoration Initiative funding, and will continue and strengthen efforts to further reduce these balances and examine potential ways to increase expenditure rates in future years.

PROTECTING OUR LAND

The EPA strives to protect and restore land to create a safer environment for all Americans by cleaning up hazardous and non-hazardous wastes that can migrate to air, groundwater and surface water, contaminating drinking water supplies, causing acute illnesses and chronic diseases, and threatening healthy ecosystems. We preserve, restore, and protect our land, for both current and future generations by cleaning up contaminated sites and returning them to communities for reuse. Our funds will assist communities in using existing infrastructure and planning for more efficient and livable communities, and encouraging the minimization of environmental impacts throughout the full life cycle of materials.

In fiscal year 2016, we will increase the Superfund Remedial program by \$39 million to accelerate the pace of cleanups, supporting States, local communities, and tribes in their efforts to assess and cleanup sites and return them to productive reuse, and encourage renewable energy development on formerly hazardous sites when appropriate. We will expand the successful Brownfields program, providing grants, and supporting area-wide planning and technical assistance to maximize the benefits to the communities. In fiscal year 2016, the EPA is investing \$110 million in funding for Brownfields Project grants to local communities, an additional \$30

million over the fiscal year 2015 Enacted Budget, increasing the number of grants for assessment and cleanup of contaminated sites. This investment builds on the program's successful community-driven approach to revitalizing contaminated land and further supports the agency's efforts to make a visible difference in communities.

TAKING STEPS TO IMPROVE CHEMICAL FACILITY SAFETY

In support of the White House Executive Order 13650 on Improving Chemical Facility Safety and Security, the EPA is requesting \$27.8 million for the State and Local Prevention and Preparedness program, an increase of \$12 million above the fiscal year 2015 enacted level. This increase will allow the EPA to continue to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to facility workers and operators, communities, and responders.

These efforts represent a shared commitment among those with a stake in chemical facility safety and security: facility owners and operators; Federal, State, local, tribal, and Territorial governments; regional entities; nonprofit organizations; facility workers; first responders; environmental justice and local environmental organizations; and communities. In fiscal year 2016, we are implementing actions to strengthen community planning and preparedness, enhance Federal operational coordination, improve data management, modernize policies and regulation, and incorporate stakeholder feedback and best practices.

CONTINUING EPA'S COMMITMENT TO INNOVATIVE RESEARCH & DEVELOPMENT

In building environmental policy, scientific research continues to be the foundation of EPA's work. Environmental issues in the 21st century are complex because of the interplay between air quality, climate change, water quality, healthy communities, and chemical safety. Today's complex issues require different thinking and different solutions than those used in the past. In fiscal year 2016, we are requesting \$528 million for research and development to evaluate and predict potential environmental and human health impacts including impacts related to air pollution, water quality, climate change and biofuels. This will allow all decision makers at all levels of government to have the science needed to develop and implement environmental policies and strategies. This request will also support expanding the EPA's computational toxicology effort—which is letting us study chemical risks and exposure exponentially faster and more affordably than ever before. We are also providing support tools for community health, investigating the unique properties of emerging materials, such as nanomaterials, and research to support the Nation's range of growing water-use and ecological requirements.

SUPPORTING STATE AND TRIBAL PARTNERS

Effective environmental protection is a joint effort of EPA, States and our tribal partners, and we are setting a high bar for continuing our partnership efforts. That's why the largest part of our budget, \$3.6 billion dollars or 42 percent, is provided directly to our State and tribal partners. In fiscal year 2016, we are requesting an increase of \$108 million in funding for State and Tribal Assistance categorical grants. The increase for State and Tribal Assistance includes an additional \$31 million over the fiscal year 2015 enacted level for the Tribal General Assistance Program, supporting tribes in the development of sustainable and robust environmental regulatory programs for Indian Country.

As one example of our efforts, we are also including opportunities for closer collaboration and targeted joint planning and governance processes. One example is the E-Enterprise approach, a transformative 21st century strategy to modernize the way in which government agencies deliver environmental protection. With our co-regulatory partners, we are working collaboratively to streamline, reform, and integrate our shared business processes and related systems. These changes, including a shift to electronic reporting, will improve environmental results, reduce burden, and enhance services to the regulated community and the public by making government more efficient and effective. State-EPA-Tribal joint governance serves to organize the E-Enterprise partnership to elevate its visibility, boost coordination capacity, and ensure the inclusiveness and effectiveness of shared processes, management improvements, and future coordinated projects. Projects following the E-Enterprise approach will yield the benefits of increased transparency, efficiency, and burden reduction for communities, businesses, and government agencies when implemented.

MAINTAINING A FORWARD LOOKING AND ADAPTIVE EPA

The EPA has strategically evaluated its workforce and facility needs and will continue the comprehensive effort to modernize its workforce. By implementing creative, flexible, cost-effective, and sustainable strategies to protect public health and safeguard the environment, the EPA will target resources toward development of a workforce and infrastructure that can address current challenges and priorities.

We are requesting funding in this budget to help us fast-track efforts to save taxpayer dollars by optimizing and renovating critical agency space. That includes our laboratory buildings across the country, where we conduct critical scientific research on behalf of the American public. In the past 3 years, the EPA realized \$8.3 million in rent avoidance by releasing over 225 thousand square feet of space nationwide. We've taken a careful look at our workforce and facility needs so we can continue to optimize and update our physical footprint in fiscal year 2016. We'll also target resources to prepare our outstanding agency workforce for the future, and continue our E-Enterprise effort with States to improve and modernize joint business processes—for instance, replacing outdated paper processes for regulated companies with electronic submissions.

The EPA continues to examine its programs to find those that have served their purpose and accomplished their mission. The fiscal year 2016 President's budget also eliminates some mature programs where State and local governments can provide greater capacity. Those grant programs are the Beaches Protection categorical grants, the State Indoor Air and Radon grants, the Targeted Airshed grants and the Water Quality Research and Support grants, totaling \$44.6 million.

The EPA's fiscal year 2016 budget request will let us continue to make a real and visible difference to communities every day. It will give us a foundation to revitalize the economy and improve infrastructure across the country. And it will sustain State, tribal, and Federal environmental efforts across all our programs.

I thank you for the opportunity to testify today. While my testimony reflects only some of the highlights of the EPA's fiscal year 2016 budget request, I look forward to answering your questions.

Senator MURKOWSKI. Thank you, Administrator. I appreciate, again, you being here.

We're joined this afternoon by the majority leader, and I'm told that he has a meeting with the Prime Minister here very shortly, so I would like to defer to Senator McConnell for his questions first.

FEDERAL PLAN—CARBON REGULATIONS

Senator MCCONNELL. Thank you, Madam Chairwoman.

Administrator McCarthy, as you know, things are not well in the Commonwealth of Kentucky. We have a depression in Eastern Kentucky.

Your agency's proposed budget request, if approved, would facilitate the EPA's plan to shut our coal plants in my State, put countless more of my constituents out of work, all in service of a regulatory agenda, the actual benefits of which neither you nor anyone else can seem to explain.

My constituents want their dignity restored. They want to be able to work. They want to be able to provide for their families. You cannot guarantee your carbon regulations won't cost my constituents jobs. You cannot guarantee your carbon regulations won't raise their utility bills. You refused my multiple invitations to come to our State and discuss these regulations with my constituents.

And one of your deputies, listen to this, added insult to injury when she said, EPA only held hearings, she said, on carbon regulations in areas where your colleagues, "were comfortable coming to." I assume that's places unlike Pikeville, Kentucky.

Now, I know that the Obama administration points to Kentucky as a State where your plans are actually underway. But according

to our Governor's office, my State will not be able to submit a State plan that meets your demands before the current Governor leaves office, which is December of this year, 2015.

So you might be interested to know that all the major candidates for Governor this year, one of whom will take office in December of this year, have said they're not going to submit a plan. The current Governor, who's working with you, will be gone. He says he can't finish it by December. And none, the Democrat and multiple Republican candidates, none of them are going to submit a plan.

So my question is, how in the world do you intend to force my State to comply with a Federal plan? What are you going to require Kentucky to do, run coal plants less of the time, build gas plants, erect wind mills, put up solar panels, build pipelines? Does EPA really know how to do all these things? Do you think you can really require these things under the Clean Air Act?

Ms. MCCARTHY. Leader McConnell, thank you for your questions, and I appreciate your concerns. Let me try to answer them.

I believe that EPA has designed this plan in a way that we are respecting the current situation in States and their energy mix, designing our standards to accommodate reasonable benefits in terms of reducing carbon pollution and what those States can do and leaving tremendous flexibility to the individual States in the most respectful way that we can.

I am more than happy to take your comments and to work with any Governor of any State at any time, whether they're here or Governors in the future. We have been working closely with this Governor and clearly with his staff to try to look at what options are available and how they can address the issues associated with their carbon emissions in ways that are reasonable and appropriate for their State, which is the interest that you share as well, sir, in protecting your communities and your families.

To the extent that we can continue to work with future Governors, I would love that opportunity. When you take a look at the comments that have been received, they are thoughtful, they are critical, and they are supportive. We are looking at each and every one of them, so this final rule can be something that every State can achieve and be proud of, and that we would continue to encourage every State to take the opportunity we have given them in this rule, which is to design the solution themselves in a way that meets their own needs and their energy projections.

Senator MCCONNELL. Well, if I may, I hate to interrupt, but I'd like to make sure I get some more in before I run out of time.

Ms. MCCARTHY. That's fine. No problem, sir.

CLIMATE CHANGE REGULATIONS

Senator MCCONNELL. So you got a current Governor who can't finish before he leaves all of this in December, and the next Governor who's not going to file a plan. So I assume you'll have to wrestle with that.

So let me move onto another issue. You and your colleagues like to imply that Congress won't have a role in this process when you proposed the plan last year. You cited, for example, multistate programs as a basis to ensure "more flexibility and lower costs." Recently, one of your deputies told the Federal Energy Regulatory

Commission (FERC) that the multistate plans are a significant part of your strategy.

I'd like to acquaint you with section 102(c) of the Clean Air Act requirements, requires Congressional consent for cooperative agreements. That's section 102(c) of the Clean Air Act requires Congressional consent for cooperative agreements. The law reads, "No such agreement or compact shall be binding or obligatory upon any State unless and until it's been approved by Congress." Unless and until it's been approved by Congress, doesn't seem ambivalent to me.

I can assure you that, as long as I'm majority leader of the Senate, this body is not going to be signing off on any back door energy tax.

One final point. You have assured international officials that the United States is serious about imposing climate change regulations. I'd say what we have learned from your recent time on Capitol Hill, this is not the case. I would remind you, the executive branch is only one-third of the U.S. Government. The Congress, of course, didn't pass Cap and Trade back in 2009 and 2010 when the Democrats had very large majorities here. So the failure of Congress to sign off should signal to other countries that they should proceed with caution into the December 2015 climate talks in Paris.

Any further thoughts? I'm about out of time.

Ms. MCCARTHY. I'm sorry. Let me just indicate, sir, that I believe that we're acting under the authority that Congress gave us under the Clean Air Act, and we are going to be producing a rule that will stand its test of time in the courts.

Senator MCCONNELL. Yes, well, that's going to be the test. You're going to have to prove it in court as you know. In the meantime—

Ms. MCCARTHY. As we most often do.

Senator MCCONNELL. Yes, in the meantime, we've got a grim, grim situation in Kentucky.

Thank you, Madam Chairwoman.

Senator MURKOWSKI. Thank you, Leader.

Let's go to our ranking member for his questions, and then we'll come back to the Republican side.

CLIMATE CHANGE RULES

Senator UDALL. Thank you very much. Let me get my microphone there.

Administrator McCarthy, New Mexico and the Southwest are, as you probably know, are really in the bull's eye when it comes to climate change. The effects can readily be seen. We are experiencing serious decreases in snow pack and river flows, which has led to one of the longest and most severe droughts in history.

Climate change is a serious problem. The American people know it's serious, and they want something done. EPA is answering the call, and I fully support your efforts. That's why I'm glad to see that EPA is tackling emissions reductions on multiple fronts by proposing lower standards for greenhouse gas emissions, including new standards focusing specifically on methane.

Administrator McCarthy, I know we hear a number of concerns this morning about potential impacts that your proposed climate rules will have on jobs and the cost of the reliability of our energy supply. I'd like to take a moment to ask you to address a couple of those concerns.

Can you share with us why you believe your proposed framework offers States the proper flexibility to comply with the new standards, and why in particular you are confident that the rules will protect the reliability of the Nation's energy supply?

Ms. MCCARTHY. Well, thank you for the questions.

The way in which we designed this rule was to make sure that we did what the States and most were asking us to do, which was to use our science to establish standards and to allow maximum flexibility for the States to achieve that in a way in which they were planning to grow their energy, but to do it in a way that would reduce the carbon emissions from those energy supplies.

There is tremendous effort on the part of every State to actually look at their energy system now. It is in transition. We are seeing changes, and this rule should underpin that.

What we have understood is the need for us to take a look at where every State is and what their options are, to be reasonable in what we think they can achieve, and to give a long period of time for that achievement to happen, which sends a long market signal but provides ultimate flexibility for the States to design their own future for themselves. What we are seeing is that even heavily carbon emitting sources like coal facilities, you still have coal significantly in the mix in 2030. It's now at about 37 at the most, 34 percent of the energy mix. It's still going to be 30 percent in 2030.

So we are not picking and choosing among energy systems here. We're looking what States are doing. We're looking at where the energy supply is heading. We're allowing States to get there, and we are ensuring that we provide the time and the flexibility so that reliability will never be threatened and affordability of our energy systems can be maintained.

CLIMATE CHANGE—FINAL RULES

Senator UDALL. The draft rules have been open for public comment and feedback. I think you've done that pretty extensively. Can you discuss how you plan to address some of the concerns raised by stakeholders in the final rules?

Ms. MCCARTHY. I can. Thank you for mentioning the outreach efforts, because it really was unprecedented. I think we've been working at that for about 3 years. We have been talking about this rule and the opportunities for reductions. We received close to 4 million comments and have been working extensively with the stakeholders. We are confident that every State has an opportunity here to move forward, given the flexibility we have to design their own plans.

We are confident, again, that everyone can do it in a way that continues to advance their own economy, that will not threaten jobs, that will not threaten the reliability and affordability of our energy system. We are looking at this as real opportunities economically for the United States to do what you suggested, Governor—I mean, Governor, past tense—Senator. What you have in-

licated is to unleash the innovation in our economy so that the United States can lead the charge to a low carbon future, and we're confident that we will get there.

Senator UDALL. And really what you're talking about, by setting these guidelines and these standards, companies can then innovate and try to really move in the direction where we can meet all the specific targets that we've put in place.

Ms. MCCARTHY. We know that the comments have provided us significant opportunity to do two things, to look at the State targets individually and to look at the framework itself. We got significant technical comments on this. We're paying attention to each and every one of them.

We know that, if we pay attention to those, and we pay attention to what States are telling us, and the utility world as well and stakeholders, that we will make adjustments that will make everybody look at this final rule and recognize that we have paid respect through the common process in what has been provided to us in the way of real data.

CLEAN AIR ACT COMPLIANCE COSTS

Senator UDALL. The history of the Clean Air Act Amendment shows that compliance costs have been far lower than expected when laws are implemented. Can you remind us about the experience of implementing the 1990 amendments and talk about what lessons that experience have shown?

Ms. MCCARTHY. Well, Congress wisely asked us to pull together basically a Federal advisory committee that had an extensive make up to look at the 1990 amendments and do sort of a 20-year review. Did we get there? What was the cost?

We found that the benefits of the Clean Air Act absolutely tremendous. They have saved countless lives and billions and billions, if not trillions, of dollars. They have protected our families.

One thing I would indicate to you as well, Senator, is that, in my short time, I have seen basically my partnership with utilities to look at how to do this reasonably, has meant that they have always achieved more than what our standards required and at cheaper cost. Because once they embrace the direction in which our rules ask them to head, they run as fast and as far as they can.

In a rule like this, every time you run farther, you will save more money, and you'll save your consumers more money, and that is basically a win for everyone.

Senator UDALL. Thank you. Thank you, Madam Chair.

Senator MURKOWSKI. Thank you, Senator Udall.

Administrator, I want to follow on with the majority leader's comments about the Clean Power Plan.

Ms. MCCARTHY. Yes.

CLEAN POWER PLAN

Senator MURKOWSKI. As you know, I have been raising the concern, the alarm about reliability of our electricity in our grids across the country and the impact of this proposed carbon rule on the aspect of reliability. We saw the analysis last week from the North American Electric Reliability Corporation (NERC) that didn't do much to calm my fears on that.

But I mentioned in my opening statement that the technical analysis that was done, the integrated planning model and regulatory impact analysis, failed to evaluate the application of the rule to my entire State, didn't even look at it. And I think the lack of analysis was there because Alaska is so unique. We're not connected to anybody else's grid. The size and the scope is pretty considerable as we know. But there's very little comparison to other States, and our electricity sector is substantially different than what you have in the lower 48.

We have five facilities that we're talking about here, four of which are natural gas, one is coal. So when you're talking about how you're going to get to that 26 percent reduction, there's not a lot of give. And as a consequence, Alaska has looked at this very critically and says, there is no way that we can achieve what has been set out.

You use the word flexibility quite a lot, but the concern, of course, is that there is no level of flexibility that will make a proposal like this work in a State like Alaska, and so our State's leaders have asked that Alaska be exempted in the final rule.

How carefully are you considering this request for an exemption, and what can you give me in terms of your reaction to that request?

Ms. MCCARTHY. Well, Madam Chairwoman, let me explain. The analysis we did in our rule is a national analysis and a regional analysis looking at issues like reliability, which we believe is really the most significant way to analyze it, especially when you give so much flexibility to individual States.

Having said that, we find ourselves often talking about the uniqueness of Alaska. This is another instance in which that is, again, the case, because they are not interconnected in a way that other States are.

Senator MURKOWSKI. So are you considering the State's request for a full exemption?

Ms. MCCARTHY. We actually have, in the rule itself, solicited that comment, because we indicated that this was our assessment of what could be achieved, but we asked specifically for comment on this specific issue. So we will, of course, take this under very serious consideration.

But you should be, I believe, heartened by the fact that we acknowledged the uniqueness, and we solicited that comment. So it gives us every ability to take whatever action we think that the data justifies and would indicate to us is appropriate.

WATERS OF THE UNITED STATES

Senator MURKOWSKI. And of course, right now, our concern is, where is the data?

Let me turn to waters of the United States, because this is, again, an area of extreme concern. I mentioned the wetlands that we have in Alaska, 63 percent of the wetlands in the entire United States are in Alaska. And so the concern that we have is the expansion of the scope that EPA may regulate will lead to a situation where development of any kind is next to impossible, the smallest development.

And it's coming from folks not necessarily associated with the oil and gas industry, but it's home builders, it's farmers, it's energy, it's mining companies, it's the transportation sector. There is major concern across the board. And I know that I'm speaking for not just Alaska when I talk about the various constituencies that are really quite rattled about the application of this proposed rule.

You have suggested that these concerns are overblown. At one point, you called some of the issues that have been raised ludicrous. Folks back home don't think it's ludicrous. They are scared to death about what we may see with application of this rule.

And you keep using the word clarification, or this is just to clarify. But again, I'm hearing from too many different sectors saying, this is not clarification. This is a limitation on our ability to not only move but to breathe.

And I guess the question to you today is, why should we trust the assessment that this rule is just a clarification when across the spectrum, you have different voices, not just in Alaska, but different voices around the country that are saying, this is going to increase our cost, it's going to limit our ability to conduct business? How can you convince me that this is a clarification?

And then the follow on question that I'd like you to address is, the Ag Committee has been quite loud in its objection, you've suggested that you're working to address some of their issues. We don't have as much agriculture in Alaska, but we sure have a lot of upset and angry miners, developers. What are you doing to address the concerns that they have raised as well?

Ms. MCCARTHY. Well, let me just begin by saying, the reason we're down this road in terms of doing a rule making is actually to provide clarification. Let me explain that.

It is because the Supreme Court, in recent decisions, have told us that we need to do a better job at making sure we're doing—taking the closest look at the science available to us. We are ensuring that we are protecting those waters that are most important for all of the virtues of water that we love, which is to provide us drinking water supplies, help us with natural resource protections that we all care about.

I know that this is important not just to folks in Alaska but throughout the United States. It is a difficult rule. Everybody is engaged, but I would also indicate that I have just as many constituents, if not more, telling us how important it is to complete this rule because of the lack of clarity, because we know we are not protecting some waters and streams which science tells us we should be more carefully protecting.

This is not an expansion of our jurisdiction. This is a way to focus attention where it's deserved, so that there can be increased clarity about what's in and what's not in. What we are also seeing is work being done where it's unnecessary to do, because the science can clearly tell us what we should be focusing our attention on it and what not.

So we're working very closely with the agriculture community. We have done absolutely nothing to take away the exemptions or exclusions that are in current rules and law, and we have, in fact, done more exclusions than under current law.

So we have to be clearer about what we're saying as well as being very clear about waters that are important to protect, and that's what this rule is all about. We sought to do this in a guidance, apparently before I took this position, but the clear, overwhelming message to us was, do it in a rule. Give us a chance to comment on it. Let us take a look at it.

What we are trying to do is make sure that we're paying attention to the comments. This is not ludicrous, nor is any comment. This is serious business, and we need to get this final rule right, and we understand that, and science can allow us to do that.

Senator MURKOWSKI. Well, and I think you understand that the heart of this debate is, is this a clarification or is this yet that overreach, that creep of an agency that so many of us are concerned with. While your words are articulate this afternoon, I don't think it does much to calm the fears of the farmer—or excuse me, the miner out in 40 Mile, who is worried about whether or not they're going to be able to move forward with their small placer mining activity.

Let's go to Senator Leahy.

Senator LEAHY. Thank you very much, Madam Chairwoman.

Administrator McCarthy, you and I have had a lot of discussions, and I appreciate you coming to Vermont when you have. I know you get a lot of strong reactions from the public, even from some of my colleagues in the Senate.

But in the 44-year history at EPA, you cleaned the country's drinking water, something of great significance to the health of all of us and our children and our grandchildren. You've reduced our exposure to dangerous chemicals. You've penalized polluters. That's why most Vermonters applaud what you've done with the environment, and they applaud EPA.

Ms. MCCARTHY. Thank you, sir.

RESIDENTIAL WOOD STOVES

Senator LEAHY. There's one issue I mentioned before we started. Burning wood provides a local, affordable, renewable, efficient heat source. Vermont actually has the highest percentage of homes that use wood stoves as a main source of heat. We do in our own home in Vermont. Our chairman and ranking member's home States of Alaska and New Mexico are the ninth and seventh in the country, so major ones.

Now, EPA has adopted new emission standards for wood stoves. These standards haven't been updated since, I believe, 1988. We know we need them, the standards. We know there are dangerous air quality impacts when conditions trap smoke emissions around the hill towns. I've seen them when I've come across the brow of the hill, and there's a town in the valley enclosed in smoke.

I strongly support the Step 1 standards U.S. manufacturers already meet. I am concerned about Step 2 and the compliance timeline, the testing for it, that they may not be achievable for small businesses, and they could drive out the makers of some great products along with some small town manufacturing jobs.

So my question is, what resources does this funding request include to develop and standardize testing methods to reliably measure emissions from residential woodstoves burning both cord wood

or crib wood? And will the methods be certified and available to industry with enough lead time to design, build, and test new product lines ahead of the 2020 Step 2 compliance deadline?

Ms. MCCARTHY. Well, thank you for both the support for moving forward and for your concern about the small business implications, because EPA agrees with you that these are significant sources of pollution. We do recognize that where we can work most effectively is to look at these new standards.

The reason why we did this two phase in is to protect small businesses so they would have the time to be able to understand how to certify their stoves but also to have the time for those who are a little bit behind in modern technology to be able to innovate and be able to continue to support their businesses.

The final rule took cognizance of a very extensive communication with the Small Business Administration Advocacy Office and with small businesses in this field. We have assured them, and I think they're more than comfortable for the most part, that we gave them additional time in order to meet these second phase standards.

We will have, basically, testing processes, so they can feel confident that they can move forward and have products to sell in the marketplace that will achieve these phase two standards.

Senator LEAHY. I may want to follow up with you more as we go along, because some of the companies, Hearthstone is one, in Vermont, they're concerned about meeting these standards. We also see woodstoves used far longer than the 20-year lifespan assumed in your rule.

Ms. MCCARTHY. Right.

Senator LEAHY. That's my home, in Middlesex, Vermont, and well, the stove is not quite as old as I am. It has been there more than 20 years.

Ms. MCCARTHY. Well, we're certainly not doing anything to impact people's ability to use their existing stoves, but it is important that we make progress.

Senator LEAHY. But I got an idea on this.

Ms. MCCARTHY. Yes. Senator Leahy.

Senator LEAHY. We did the auto bailout. We had a cash for clunkers.

Ms. MCCARTHY. Oh, yes.

WOOD STOVE CHANGEOUT PROGRAM

Senator LEAHY. That got a lot of old cars off the road. If we had one, I'm probably not going to take use of it. I'll buy my own if I need a new stove. But what about a cash for clunkers for wood stoves?

Ms. MCCARTHY. Well, I do think that there have been some States that have administered that type of a program, in particular, I think, in some of the valleys in California, where the particulate matter is so high. I'm not sure whether EPA has sufficient funding to support that or whether that came from some of the local air boards. But we should look—

Senator LEAHY. Maybe we should talk about getting the funding for it, because it's something to consider.

Ms. MCCARTHY. It's a big deal, yes.

LAKE CHAMPLAIN FUNDING CUTS

Senator LEAHY. Also, you know, Vermont has got to work with EPA to achieve goals on phosphorous levels in Lake Champlain, and I appreciate you coming to Vermont to see the Lake. But the administration's proposal in fiscal year 2016 to cut by nearly 70 percent the funding for the Lake Champlain Geographical Area Program is overwhelming to a small State like ours.

So can we continue to work together on that? I know the Governor wants to, and the other members of the delegation want to.

Ms. MCCARTHY. Of course. I have to congratulate the Governor and the legislature in Vermont for really moving forward with their own State initiatives. It was very impressive to see how much work is getting done there, and I'd love to be able to support that effort.

Senator LEAHY. Well, we'll see. We'll talk to you more.

And thank you, Madam Chairwoman.

Think about this, getting some money for this cash for clunkers. And again, I assure you, I'm not looking to get rid of mine. I just want this opportunity—a lot of these towns might get rid of them in Alaska and New Mexico.

Ms. MCCARTHY. Well, this is a big deal in the Chairwoman's district up in Fairbanks. This is one of their major sources. They've had an extensive program trying to get the old ones out.

Senator LEAHY. Yes, they got a lot more money than we did in Vermont. Thank you.

Ms. MCCARTHY. Yes.

Senator MURKOWSKI. I would just tell my friend from Vermont, we have been engaged in this woodstove exchange in Fairbanks as we're dealing with a particulate matter up there. And in terms of getting the newer technologies into people's homes, it works.

What we're trying to check on now is exactly how much of the funding for that exchange was through EPA grants. So hopefully, we'll have that by the time I'm up for the next round of questioning, but we'll keep you posted on that.

Senator LEAHY. Thank you.

Senator MURKOWSKI. Let's go to Senator Alexander.

OAK RIDGE—MERCURY CONTAMINATION

Senator ALEXANDER. Thank you, Madam Chairwoman. Madam Administrator, welcome.

I've got a couple of questions about matters pending before you. In May of 2013, the Department of Energy said it would build a water treatment plant to reduce mercury contamination at Oak Ridge that's left over from the cold war, it is badly needed.

EPA is currently negotiating with the Department of Energy and the State of Tennessee to allow the design and construction to move forward. The final agreement is expected in May.

Will you commit to me that you will work to resolve this matter as expeditiously as possible, so we can move quickly to begin to reduce mercury contamination in Oak Ridge?

Ms. MCCARTHY. Yes, I will.

CLEAN AIR ATTAINMENT STATUS

Senator ALEXANDER. Thank you, Madam Administrator.

Second pending matter, last November the State of Tennessee on behalf of three Tennessee counties, Anderson, Blount, and Knox, applied for clean air attainment status with the EPA, that has to do with ozone. The good news is, this air around the Great Smoky Mountains is cleaner, demonstrably cleaner. Our conservation groups have noticed that. Most of us who live there notice that.

The local community is eager for the EPA to consider and approve the State's request for a determination that the air is cleaner. That helps them with economic development. Can I ask you to move as expeditiously as possible to review those applications?

Ms. MCCARTHY. You can, sir, and I will.

OZONE STANDARDS

Senator ALEXANDER. Thank you very much, Madam Administrator.

Now, along that line, in November, the EPA announced it might further lower the ozone standard. Now, I understand that the Clean Air Act says every 5 years, you're supposed to review that, but not necessarily change the standards.

I'd like to ask you to consider this. Now, think of it from my perspective. I live in this area that I'm talking about. I voted for the cross State air pollution rule, the Utility MACT Rule. I support the ultra low-sulfur regulations. I applauded TVA for the agreement it made with EPA to operate its coal plants cleanly. I am certain that all those actions are the reason why the air is cleaner in East Tennessee and in other parts of our State.

I think it would be better if you would allow those new laws, regulations, and agreements to continue for a while, because they're all trending in the right direction, rather than change the ozone standard, which would bring to a halt economic development. We're a manufacturing State. So if an auto supplier is coming in, say to Maryville or Oak Ridge or Knoxville, the first thing they ask is, are you in attainment? Today, the answer would be, the State says we are. We hope the EPA says we are. But if they say the EPA is about to move the ball and lower the standards, then that stops job growth in the area.

So will you seriously consider a review, but a review that recognizes that it might be better to allow these new laws, which are substantial laws, to continue before you change the ozone standard and affect the ambient air quality in Tennessee? If you lower them, you will throw every metropolitan area in our State out of compliance and bring to a halt a lot of important job growth.

Ms. MCCARTHY. Well, Senator, I am following through in the obligation under the Clean Air Act in a couple of ways. One, I'm happy that some of the national rules and some of the efforts of individual States have allowed us to start entertaining these applications to redesignate, and all of that is good news.

But my job under this particular section of the Clean Air Act is to take a look at what the health data, what the science is telling us, are the levels that we should be trying to achieve that are protective of human health and—

Senator ALEXANDER. Yes, Madam Administrator, I understand that. But these laws are new. They've just begun to take effect.

Ms. MCCARTHY. Right.

Senator ALEXANDER. The coal plants are just beginning to have these scrubbers installed. The actions we've already taken may take us to a level that is fine without having an interruption that's unnecessary. That's all I'm asking.

Ms. MCCARTHY. Well, Senator, I think maybe the most important thing for you to think about is that the proposal that we put out looked at a recommendation that I had as the administrator that I'm asked to make in these, is that I recommended that we consider a standard between 65 and 70 as most appropriate for protection of public health. The current standard is 75. I have asked for comments up to that level, and I have—

Senator ALEXANDER. Well, this is part of my comment—

Ms. MCCARTHY [continuing]. Down to 60.

Senator ALEXANDER [continuing]. And it comes from somebody who likes and votes for clean air. I have one other question.

Ms. MCCARTHY. Okay. Thank you.

TREATMENT OF NUCLEAR ENERGY IN CLEAN POWER PLAN

Senator ALEXANDER. You talked about the State clean power plans. Sixty percent of the country's carbon-free electricity, emission-free electricity comes from nuclear power. Wind produces 13 percent. Solar produces 1 percent. Now, if you're really serious about climate change, if you're really serious about clean air, then why would you disadvantage nuclear power and treat wind and solar better?

Again, 60 percent of our carbon-free electricity comes from nuclear, yet when we're developing a clean power plan in Tennessee under this proposal, we don't get credit—we get credit for all of the existing windmills and solar panels we have, which don't amount to much, not only in our State, but anywhere else, and we get credit for 6 percent of the nuclear power generation. And you don't count, for example, the new Watts Bar reactor that's coming online, which is 1,500 megawatts of absolutely clean electricity.

So what we have in our region is a State that's really doing a terrific job of making agreements with the EPA, cleaning up the coal plants, building nuclear plants, having hydro plants, and they're being penalized, because you're preferring wind and solar, which produce little, over nuclear, which produces a lot of what we want. It's the energy equivalent of going to war in sailboats when the nuclear Navy is available.

Ms. MCCARTHY. I like the analogy.

Senator ALEXANDER. Why the difference? You said you didn't want to pick and choose technologies, when, in fact, you are.

Ms. MCCARTHY. Well, we've received some comments on both sides. Did we look at how important the current nuclear fleet is to where we're beginning in terms of our challenge of reducing—

Senator ALEXANDER. Well, my time is up, but you don't give equal credit to a new nuclear plant and a new wind and solar plant.

Ms. MCCARTHY. That is—right.

Senator ALEXANDER. Or to an existing nuclear plant and an existing windmill or solar panel, and they ought to be the same.

Ms. MCCARTHY. That point has been made very clear. That has been made very clear in comments, and we're really looking at that. And I appreciate it.

Senator ALEXANDER. Good. Thank you, Madam Administrator.

Senator MURKOWSKI. We do do a good job of picking winners and losers around here, don't we?

Senator ALEXANDER. Well, and sometimes we're at fault.

Senator MURKOWSKI. Absolutely. Absolutely. We're not always right, and that's the problem. Let's go to Senator Reed.

Senator REED. Thank you, Madam Chairwoman. Madam Administrator, thank you very much.

First, let me thank you for the Southern New England Geographic Program.

Ms. MCCARTHY. Good.

Senator REED. Which is doing a lot to restore our coastal watershed, and it's not just Rhode Island, it's Massachusetts, Connecticut. And Curt Spalding is doing a great job as the regional administrator, so thank you very much.

Ms. MCCARTHY. Thank you.

BEACH ACT GRANT PROGRAM

Senator REED. But let me raise at least one issue of concern, and that's the proposed elimination of the Beach Act Grant Program. We have 400 miles of coastline, probably the longest coastline per size of State in the United States. I'm guessing, but 10,000 visitors a day to our beaches in the summertime, and it's very important. So anything you could do to help us restore that, I'd appreciate.

Ms. MCCARTHY. Thank you, sir.

STATE REVOLVING FUNDS

Senator REED. Let me focus on the State revolving funds. Absolutely critical. I think in every part of the country, there is a recognition that infrastructure is either inadequate or obsolete, needs to be replaced or needs to be built because of the growing areas in some parts of the country. I don't have to tell you, because you talk just like I do really.

We have wooden water piping systems in certain communities that are 100 plus years old.

Ms. MCCARTHY. Isn't it amazing?

Senator REED. Yes.

Ms. MCCARTHY. In a good way amazing.

Senator REED. Yes. It's amazing, but they're not going to last that much longer. And there is a top line increase in the budget.

Ms. MCCARTHY. Yes.

Senator REED. I appreciate that. But what I find interesting and want to ask you about is there is a shift from the clean water revolving fund.

Ms. MCCARTHY. Yes.

Senator REED. Essentially sewage piping, which is critical to our ability to mitigate flood risk, to resilience to climate change, to improve water quality, a shift there into the drinking water account, which obviously, it's necessary also. Why are you shifting limited resources? Frankly, even with this increase, it's a fraction of what we need to just stay on pace. So why are we shifting it from drink-

ing water to clean water—or excuse me, the other way, clean water to drinking water?

Ms. MCCARTHY. Well, we're trying to take sort of a current look at where the greatest need is as well as look at how we can be a little more comprehensive than reliance on SRF funds. I think as you can see from discussions last year, we're doing a better job in the President's budget at moving almost a little close to a half a billion higher in our recommends here, which is a little bit short of what was funded last year in the 2015 enacted.

But the shift was because of where the greatest need is. We see \$348 billion in need in drinking water supplies today that extend over the next 20 years. In the clean water, our wastewater facilities, we see the need at \$298 billion.

Now, I realize that that's a close call either way, but we really wanted to make a concerted effort to recognize that we are facing some very significant drinking water challenges today. We've seen problems over the past year that we have never seen before, and we wanted an opportunity to continue to move forward.

This is not a dramatic shift but one I think that is a signal that we have been more heavily investing in wastewater for a while, and we're trying to balance that out.

But I wanted to also indicate that the challenge that Congress or opportunity Congress gave us with the Water Infrastructure Finance and Innovation Act (WIFIA) is something we want to tee up for an opportunity in the future. We're going to be spending funds to at least stand that up and be ready to catch if there is opportunities to fund grants in those ways.

But also there is an opportunity, I think, with our new Water Infrastructure and Resilience Finance Center to really look at public-private partnerships and how to bring them to the table. We just need a lot more investment than we're ever going to get with our State revolving fund, and we need to think creatively about how water is going to be essential for our continued economic growth.

The private sector recognizes that and many are coming back to the United States to enjoy the clean water we have here for their manufacturing. We have to work with them to support the infrastructure in a more robust way.

Senator REED. Right. And there's another challenge, too, and that is—and this might be reflected in the need you perceive for drinking water, that is the climate changing issues that are out and about.

Ms. MCCARTHY. Yes.

STATE REVOLVING FUNDS

Senator REED. Which, you know, a lot of the estimates that were made about the State revolving funds were assuming sort of a steady state and not the dramatic changes we've seen, particularly on the West Coast and in the Southwest, in terms of drought, in terms of the need to move water further. So that would be another reason why we need more—

Ms. MCCARTHY. It is. We're looking at the harmful algal blooms that we're seeing, both in Senator Leahy's area at Lake Champlain but also certainly in the Great Lakes, in particular, western Lake Erie. They're actually growing everywhere, and that is, in many

ways, a reflection of the increased temperature that is allowing those to grow, and the cyanotoxins are getting to be something that I think many of us are very concerned about managing more effectively in our drinking water supply.

Senator REED. And some of that will require additional infrastructure.

Ms. MCCARTHY. It will, yes.

Senator REED. Additional revolving fund resources, etc.

Ms. MCCARTHY. That's correct.

Senator REED. In fact, I would assume, as you're sitting down with your staff and your predecessor 10 years ago was making a bold estimate of X, that probably is 2X or something.

Ms. MCCARTHY. Well, it certainly couldn't have factored the changes we're seeing today.

Senator REED. Right. Well, thank you very much. We want to work with you to understand better the shift of the resource funds.

Ms. MCCARTHY. Thank you.

Senator REED. And try to be helpful in providing more resources. Thank you.

Ms. MCCARTHY. I appreciate that.

Senator MURKOWSKI. Thank you, Senator Reed. And I appreciate your leadership on these areas of the State water revolving funds. It's something that, when you were chairing this subcommittee and I was ranking, we worked together on it. It was a good thing.

Senator REED. You mean when I was over there, way over there? No.

Ms. MCCARTHY. He looks more relaxed than last year. That's all I have to say.

Senator REED. No, this is a fun hearing this year.

Senator MURKOWSKI. It is good.

Senator REED. But I can't leave without commending you for your leadership and for your collegiality. Thank you.

Senator MURKOWSKI. Thank you. Good to work with you. Let's go to Senator Cassidy.

WATERS OF THE UNITED STATES RULE

Senator CASSIDY. Sorry, I had to leave to another subcommittee hearing, so you may have answered some of these questions already.

On the Waters of the U.S. Rule, do you have a cost-benefit analysis?

Ms. MCCARTHY. Do I have—I'm sorry?

Senator CASSIDY. A cost-benefit analysis. How much will this cost?

Ms. MCCARTHY. Yes. There is a cost-benefit analysis. We're actually doing a revised cost-benefit analysis for the final rule as well.

Senator CASSIDY. Now, is this the cost to businesses, local governments, homeowners, etc.? Does it include that as well? So there's the direct cost to the Federal Government, obviously.

Ms. MCCARTHY. Right.

Senator CASSIDY. But it's actually the indirect cost. And in fact, I was reviewing one of your documents, and it said actually the indirect cost is the greater of the two, that to the Federal Govern-

ment relatively low, that to private industry, to individuals, small businesses, etc., relatively great.

Ms. MCCARTHY. Well, what the costs are and the indirect costs that we're calculating are costs associated with mitigation should someone seek to pollute or otherwise damage a water that is jurisdictional. That is what—

Senator CASSIDY. So the expanded—

Ms. MCCARTHY [continuing]. There is no cost unless you're actually wanting to destroy or pollute a water of the United States as it will be—

Senator CASSIDY. But in your rule, you expand your jurisdiction, so there will be more waters. Again, as I'm told, a seasonal stream in a forest that when it rains it fills up would now be under jurisdiction. And so there would have to be not just if there is some pollutant which enters, there would have to be some mitigation. But it's also the cost of, oh, my gosh, we got to comply at the rule and make sure something doesn't happen, and they would have to think about not necessarily environmental problems, but how to keep from getting sued by the EPA.

So it seems a little bit more than just if they spill oil that they have to clean up. It seems substantially more than that. Wouldn't you agree?

Ms. MCCARTHY. I don't believe that we are expanding the jurisdiction of the Clean Air Act, and I think—

Senator CASSIDY. I'm sorry, Clean Water Act.

Ms. MCCARTHY. I'm sorry, Clean Water Act.

Senator CASSIDY. Now, in your—

Ms. MCCARTHY. I'm getting my media confused. I apologize.

Senator CASSIDY. That's okay. I got that from your document that says there's going to be a 3 percent increase in the waters under your jurisdiction, which 3 percent is small, until you think of the Federal Government and until you think of the United States. United States, 3 percent is pretty big in terms of absolute numbers.

Ms. MCCARTHY. I think what that number actually reflected is the fact that we are going to be more precise about waters that require to be protected under the Clean Water Act. It is not an indication that we are expanding jurisdiction or that anyone will have to worry, particularly in agriculture, over the impact associated with this, because we continue to maintain all of the exemptions and exceptions in the current Clean Water Act.

Senator CASSIDY. Now let me ask you then on something else. Thank you for that answer.

Ms. MCCARTHY. You're welcome.

Senator CASSIDY. I'll see if my agriculture people are satisfied, but I suspect they—

Ms. MCCARTHY. Well, have them call. I've been meeting with folks. I would be more than happy to talk to people if there are concerns, and we can certainly take their concerns into account as we're finalizing the rule.

CLEAN POWER PLAN

Senator CASSIDY. Now, your carbon rule, which you know better than I, so I'm going to speak kind of from a gestalt if you will.

Ms. MCCARTHY. Okay.

Senator CASSIDY. Senator Vitter and I had a field hearing last year in Lake Charles, which is Louisiana, which is having a big increase in investment. And the wonderful thing about this is they're going to create like 20,000 blue collar jobs over the next decade, I mean, really good jobs with good wages, good benefits.

So when we came in, we're talking about the ozone rule and need for credits and how you're going to comply. And someone says, what will happen is a bigger company will buy a smaller refinery or plant and just shut it down, and they will take credit for shutting it down. Now, that company may move their operations overseas, but in the locality or the jurisdiction, Region 6, I suppose, they will show that they are on net not increasing the amount of whatever you are concerned about emitting.

Now, my concern about that is that the—my concern about that is that all those jobs are lost. So we're complying shipping jobs overseas, and we're not really complying, because carbon is a global emittent. Now, that's just common sense, but for some reason, that argument doesn't seem to weather very much.

It looks like I'm 5 minutes over. Madam Chair, is that correct?

Senator MURKOWSKI. You're not 5 minutes over.

Senator CASSIDY. Thank you.

Senator MURKOWSKI. I'm being told you're 5 minutes over. You're a little bit over.

Senator CASSIDY. Well, I'll finish with that, if you could just answer to that. And I apologize for going over. I don't know how that happened. I thought I was keeping an eye on it.

Ms. MCCARTHY. Senator, I want to assure you that we believe that this rule is designed in a way that would reduce carbon emissions from fossil fuel power plants in a way that would actually continue to allow the growth of the economy and jobs.

The scenario you are talking about is not a scenario that we had ever contemplated or we believed would ever come out of a rule that is properly designed that we can reduce carbon pollution while we continue to grow jobs.

Senator CASSIDY. My reply will be, that's what industry tells me that's going to happen.

Ms. MCCARTHY. I understand. But I don't believe that that is a legitimate compliance scenario under any standard that EPA has ever initiated, including this one.

Senator CASSIDY. Okay.

Senator MURKOWSKI. Thank you, Senator Cassidy. Senator Daines.

IMPACT OF EPA REGULATIONS ON COAL

Senator DAINES. Ms. McCarthy, thank you for being here today. As you know, coal is an important fuel for electricity, not only in my home State of Montana, but nationwide. In fact, more than half our electricity in Montana comes from coal, nationally, about 40 percent.

It is all about our good paying jobs in Montana. It's for our tribal members in Montana as well as generating nearly \$120 million in tax revenues that we depend on for our schools, our teachers, our infrastructure. In fact, it's Montana coal that goes out to the Mid-

west and powers Detroit Edison that powers our automobile industry. And so it's very, very important here we maintain and grow this industry. And the bottom line is, it keeps electrical prices low and puts food on the table for Montana families.

But I can tell you, we are very frustrated. We are frustrated with the lack of meaningful consultation from your agency as it's been developing the regulations for coal-fired plants. Studies have shown that wholesale electric prices will spike as high as 25 percent in Montana and Montana households, which results in about \$110 a year in increased prices.

I'm very concerned your agency is not taking into account potential impacts back in Montana. Let me give you an example. There was a listening session regarding these proposed regs. It was two States away from Crow Agency, which is really ground zero for much of our coal activity. That's the headquarters of the Crow Tribe of Montana. Two States away, 500 miles. That would be the equivalent of having a listening session in Washington, DC, and telling the folks in Detroit to drive to Washington to let their voices be heard.

The Crow Tribe, in fact, there's two Crow Tribe members here today, they rely on coal production for their jobs. In fact, two-thirds of their annual budget depends on coal. This is how we fund the Crow Elder Programs, higher education for Tribal Youth and other essential services for the 13,000 rural citizens.

In fact, the unemployment rate today in Crow country is 47 percent. Without these coal jobs, it goes up north of 80 percent unemployment. It is a path into poverty if we eliminate these coal jobs. Ninety percent of the coal mines and the mine near Crow Agency is sold to power plants in Minnesota, which would be strongly encouraged to retire their plants because of the EPA's Clean Power Plan standards.

In fact, the Senate Committee on Indian Affairs, which I serve on, we just held the first ever energy and jobs Indian affairs U.S. Senate field hearing in Crow Agency in Montana. We invited the EPA to testify. They declined. And we think it's very important. In fact, I again make an offer, if you come to Montana, I'll pick you up in my Ford, and we'll drive from Billings. And I'd love to have you really listen to the people there in Crow country and hear their heartfelt concerns around where this is all headed for their livelihoods in Montana.

So we had this great field hearing. We had 200 people show up in a room, primarily from the Crow Tribe. And so my first question, have you had a chance to review the input that was given at that field hearing? It just happened right after Easter.

Ms. MCCARTHY. Yes, I myself have not. I have had certainly a number of discussions with the folks who work in Montana that are looking at developing plans. I've been encouraged by those discussions, because as far as I know, coal will continue to be a significant source, and they feel there's many opportunities to move forward under compliance.

If there are concerns that we haven't heard, or if there's discussion I should catch up with you on, I'm more than happy to do that.

Senator DAINES. Yes, I would like to get a follow up, so you could hear directly from the Crow people. We had a member from the

Navajo Tribe come up as well and testify at that hearing. In fact, our attorney general testified as well. He's filed joint comments with the Crow Nation on the rule. And I don't know who's reviewed them. Have you seen those comments yet?

Ms. MCCARTHY. Well, we received close to 4 million comments on this rule, so I haven't reviewed them all myself, but I certainly can consult with my staff who are looking at all of them now.

Senator DAINES. Yes, I just would ask, you know, we've got a nation, the Crow Nation, as well as our attorney general, to make sure that that testimony is heard. Most of their comments surrounded the impact that's going to happen in the Midwest utilities who are customers of Crow coal and how their concerns can be mitigated.

I know there was discussion about working with the Governors, and so forth.

Ms. MCCARTHY. Yes.

Senator DAINES. Our Governor also filed comments on the EPA's Power Plan.

Ms. MCCARTHY. Yes.

Senator DAINES. Our Governor is a Democrat.

Ms. MCCARTHY. Yes.

Senator DAINES. He's filed comments on this, and we've all expressed concerns over these proposed changes, importantly, allowing the States, let me just say this, to submit their own implementation plans does nothing to fix the issue that the Montana Crow Nation will lose, because their customer base, 90 percent of this coal, is used outside of Montana. So it's really dependent on what Minnesota and Michigan are going to be inputting on these rules, not just what Montana has to say on it, because we're mining it and shipping it out to the Midwest.

So I guess my question is, when can you review the input from that field hearing, because the livelihood of these Crow tribal members depends on what happens with the coal industry?

Ms. MCCARTHY. Well, I want you to know, we will look at each and every comment. I'm more than happy to look at those comments myself, and I will certainly do that.

Senator DAINES. I appreciate that, because again, what's at stake here is literally, there is not another path right now for good paying jobs in the Crow Reservation without these coal jobs.

Ms. MCCARTHY. Well, thank you for calling it to my attention. I will do that.

Senator DAINES. I appreciate that, and thanks for looking into it.

Senator MURKOWSKI. Senator Cochran.

OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS

Senator COCHRAN. Madam Chair, thank you for convening this hearing specifically to review EPA's budget request for next fiscal year, 2016.

EPA's mission is a very big one and a very important one. We understand that. Helping protect human resources, human health, and preserving the environment are all very worthy and important considerations for this subcommittee.

So it's not unexpected that EPA's regulations and proposed regulations sometimes run counter to our Nation's economic interests,

and that shouldn't be surprising. But the balancing of those interests in a fair-minded way that's consistent with our national economic interests as well as our health interests is something that we're trying to approach to a state of reasonableness that will be applauded and appreciated.

The Senator from Louisiana raised a question about agriculture and the fact that many States are concerned about proposed rules to reduce ground level ozone standards. What is the status of your work in that area, and what do we tell agricultural and timber resources, people who are involved in that in our State, what the goals are in—

Ms. MCCARTHY. Well, the status is that the courts have told us that we had to move forward with a review of our Ozone National Ambient Air Quality standards. We have put a proposal out that looks at current science and makes some recommendations. The comment period on that proposal closed and we are looking at an October deadline that the courts have given us to finalize that rule. Let me make sure I got that exactly right. Yes.

OZONE LEVELS

Senator COCHRAN. How are you planning to take into account naturally occurring ozone levels and how that impacts, too, on the bottom line?

Ms. MCCARTHY. Actually, the proposal itself, which we solicited extensive comment on, does talk about background ozone levels, because in some areas of the country, it is high, and we're looking at how much that actually impacts an ability of a State to achieve a health-based standard.

But in the rule itself, our obligation is to look at the science as to what is protective of human health and welfare and what's sufficient protections. Then when we implement a standard, we pay careful attention to what we're requiring States to do in order to comply. We're accounting for background levels to ensure that States have an ability to achieve the levels that are required.

Senator COCHRAN. In that connection, do you have occasion to consult with representatives of the Department of Agriculture or with local agricultural interests? I'm just thinking about farmers in my State of Mississippi who feel as though EPA doesn't have any—or hasn't had many, if any, hearings in public in the Mississippi Delta, where agricultural interests are so important, to talk about some of these conflicts that are going to naturally arise because of the nature of your responsibilities and the interests that the general public and a large segment of our economy has in the well-being of agriculture.

Ms. MCCARTHY. Well, this rule is particularly interesting, because we are proposing a secondary standard. That has been an issue that the agriculture industry has had significant input on, as a member of a science advisory board quite a while ago to advise us on that. We also have a Federal advisory committee under the Clean Air Act that gets together and talks about these issues.

I'm quite certain that the agriculture industry has also provided significant comment on the rule that we proposed. What we're looking at in terms of our proposal is establishing a primary standard for public health but recognizing our obligation that the court con-

firmed to us, that we have to look at establishing a more reasonable secondary standard. We proposed a secondary standard that would be met through the obligations that the States would accrue to achieve a primary standard.

So we will certainly continue to listen to the comments that agriculture has provided to us, but it's not clear to me that there are additional concerns with this rule that are unique in some way. I'm more than happy to take a look at those comments in the traditional way. I think the concern might be uniqueness of establishing a secondary standard, which we feel will not be particularly challenging in terms of an implementation process. I'll take a look at those again, and we'll give them due consideration.

I share your interest in making sure that we're moving forward with our environmental rules in a way that is entirely consistent with economic goals as well. That remains my gold standard, as it does yours.

SECTION 319 GRANTS

Senator COCHRAN. I also understand that section 319 grants are very helpful to conservation districts and local governments who are working to meet EPA erosion and sediment control requirements. Your agency has indicated that the implementation of watershed-based plans helps States meet water quality standards. And our State's conservation district members have worked with the Department of Agriculture trying to work out how to deal with this so that we benefit both interests.

Ms. MCCARTHY. Yes.

Senator COCHRAN. What is your agency saying in response to the question that this is a positive step in improving water quality and it's working, if it is, to improve the environment as well as attract additional grant resources to eligible areas?

Ms. MCCARTHY. Our effort to support nonpoint source pollution 319 grants reduction is an extremely important effort for us. I know that in fiscal year 2015, the level of funding was \$159 million. We are proposing in this budget in 2016 to increase that by \$6 million, so that we can achieve \$165 million in 319 grant allocations. That will give us an opportunity for about 30 additional watershed restoration projects for the overall problem. Mississippi, in particular, will see an increase from \$2.9 million to \$3 million.

Now, I realize that we'd all like to have lots more, but I think it's a continued indication that EPA thinks these programs are very important, and we want to continue to support them as best we can.

Senator COCHRAN. Thank you very much. My time is expired.

Senator MURKOWSKI. Thank you, Senator Cochran, and I appreciate your leadership on the full committee. Senator Blunt.

LEAD MINING

Senator BLUNT. Thank you, Chairwoman. It is nice to have you here.

While people are inviting you to travel, by the way, I wanted to talk a little bit about a lead issue. This is Doe Run lead mining in Missouri. It's my understanding that there are some discussions

going on that may bring final resolution to those issues involving EPA and Doe Run.

If sometime you can stop, I'd like you to see what happens in that part of our State, which is where, I believe, most of the lead in the country is. There's some natural outcroppings of lead and other things. And I think that Doe Run is developing some new technology that will change the way they smelt that lead to reduce emission by at least 90 percent.

Ms. MCCARTHY. That's right.

Senator BLUNT. And so I know you've kept in that discussion. Sometime if we could get you to stop, I think it might be helpful just to see both the opportunity and the challenge.

There's a reason that Moses Austin moved to Missouri before he moved to Texas to become a lead miner, and that's been our sort of lead mining center even before that part of the country was added to the United States, and so it obviously has its own challenges. And anything you can do to personally stay connected to that, I think there's a solution here within reach, and that solution, as everything else at the Department, obviously benefits from the more you know about the problem, the jobs included, the alternative places we have to go to get lead if we don't get it in our own country, I think are helpful, and I'd just encourage that.

And I would love for you to put that on a trip—it's close to St. Louis, easy to get in and out, and I'd love to see you come sometime.

Ms. MCCARTHY. Actually, I was in Missouri not too long ago. I have also met separately at EPA with folks from Doe Run. I know that we have an opportunity for some mediation coming up. I do want to let you know that I will continue to pay attention to this. If there is a resolution we can reach, you can rest assured that we're going to be really trying to find that resolution.

ENVIRONMENTAL REGULATIONS

Senator BLUNT. Well, good. I'm glad to know that. I think you're moving in that direction, and I hope we wind up at a good place there.

Another question I wanted to ask, there's some experience in our State, but really all over the country, communities all around the country are facing regulation on wastewater, on storm water, on solid waste, on air quality, and many of them, more than one of those coming at a time—as far as I know, there's only one place where there's sort of a guideline already issued. The affordability of water is based on a 2.5 percent median household income metric.

But communities can be involved in many of these things at one time. They really only have one source of income. No matter how many problems they're trying to solve, there's really only one source of income.

And I'd like any thoughts you might have on the ability that EPA might have to assess the regulations in a cumulative way. I think Springfield, Missouri is one place, my home town, where they've got a proposal before Region 7 now of here's a long-term plan to deal with a number of problems in the priority that I'm sure that the EPA would have a lot to say about the priority, but a price tag that can be afforded, because again, let me go back to

there's only one place to pay this bill, and that's the people who live in the community, either through the actual bill itself, the water, the sewer, the whatever bill, or a tax bill that they also would pay. And some kind of cumulative look at these as they come before the Department, I think, could be really reasonable and helpful. Your thoughts on that?

Ms. MCCARTHY. Well, we have been looking at these issues, and I know we've been working really closely, primarily with the Conference of Mayors, to understand how we could better look at the affordability issues, because it is unquestionably very challenging.

We've been trying to encourage integrated planning so that every community doesn't think about these issues separately but thinks about them in a coordinated way. We've had some success in looking at integrated planning with water and wastewater. We're trying to understand how storm water could also be factored in as well.

We have revised our affordability criteria. I can't say that I can answer your question as to whether or not there is a way in which we can look at a broader context of planning efforts and requirements, because every statute has different requirements about how we look at cost in consideration in making decisions.

But I certainly understand the direction in which you're thinking, and I think it is a direction that EPA has been willing to head to the extent that the laws allow us to do that. We have had more success in terms of working with communities to actually reopen even past consent agreements to look at opportunities for things like green infrastructure, which can really help with storm water, can also help with drinking water and wastewater issues.

So to the extent that we can find an opportunity to keep looking at the most economical opportunities to achieve these environmental goals that we all aspire to jointly and do it in a way that continues to be consistent with the law, is we will continue with those discussions. If there is something in particular, a forum for that that you'd like to suggest, I'm certainly more than happy to think about how we would do that.

Senator BLUNT. Well, again, I think Region 7 has a proposal.

Ms. MCCARTHY. Yes.

Senator BLUNT. And a number of national groups, I'm told, have looked at it and said this could be the model for how we move forward.

Ms. MCCARTHY. Okay.

Senator BLUNT. If there are legislative obstacles to that kind of model, I believe I would be willing and others would be willing to help you remove some of those obstacles, because what you can't have is a community that can't afford to do what needs to be done, and no matter how they set the priorities, if your hands are tied, the bill can't be paid. And that's terrible for the community, and whatever you're trying to achieve there is not going to happen.

Ms. MCCARTHY. Well, thank you, Senator, for raising it.

Senator BLUNT. All right. Thank you. Thank you, Chairwoman. Senator MURKOWSKI. Senator Hoeven.

WATERS OF THE UNITED STATES

Senator HOEVEN. Thank you, Madam Chairwoman. Administrator McCarthy, the Waters of the U.S. Rule, WOTUS, is creating tremendous problems for our farmers and ranchers, tremendous uncertainty, and I think it should be rescinded. And undoubtedly, you are hearing many of the same concerns, not only from farmers and ranchers, but from many others, many other industry sectors and just private individuals in terms of their private property rights.

My question to you is, what are you doing about it, and how are you addressing these concerns?

Ms. MCCARTHY. Well, Senator, we certainly are going out and about. We've had more than 400 meetings with individuals as well as groups of stakeholders. We have received a number of comments. I've even tasked my local government advisory committee. They've been great at going out and even extending the reach that we can have on our own to take a look at what these issues are and how best to advise us to address them.

I think I understand the issues that folks have raised and their concerns. I think my concern is to make sure that I'm developing a final rule that respects those, that fully integrates those concerns and provides as much clarity and certainty as we can. I know that there have been folks in your State that have raised concerns.

We've met with people. I certainly have individually. We'll continue to do that to make sure that the final rule reflects their concerns and establishes more certainty without creating more layers of bureaucracy or more extensive reach of the jurisdiction of the Clean Air Act. Those are things we cannot do and we will not do. But what we will do is hopefully use—and I shouldn't say hopefully—we will use the best science available to us, so we're protecting only what needs to be protected in insuring that people have certainty to continue to do their work as they've been doing it.

Senator HOEVEN. But your authority extends to navigable bodies of water. How can you issue a rule like WOTUS that goes beyond your legal authority?

Ms. MCCARTHY. Actually, I'm doing exactly what the Supreme Court told us. It was as far back as more than 10 to 15 years ago that the Supreme Court told us that it's not navigable in a traditional sense, it's protecting waters that are important for drinking water. So we have to look not just at those navigable waters but all the waters that feed into those that have an ability not just to be connected but significantly impact the quality of those downstream waters that are so important to drinking water protection.

That's what they've told us. They've told us we have to look at what they call a significant nexus and that we have to look at waters that act as an ecosystem. We've done years of research trying to answer those questions so that people could be certain about what their obligations are and we could be certain that we're protecting the drinking water that's so important for people across this country.

Senator HOEVEN. Under that argument, what is the limitation on your authority?

Ms. MCCARTHY. The limitation on our authority is that we are only supposed to protect those waters that are necessary to protect those downstream areas. Period.

Senator HOEVEN. But again, that leaves it entirely subject to your interpretation, does it not?

Ms. MCCARTHY. Actually, no. That's what this rule is trying to do is to provide clarity. That's why we put out a rule. That's why the rule is so important to finalize.

Senator HOEVEN. But it's done just the opposite. It's created even more uncertainty and indicated to, like I say, not only farmers and ranchers but private individuals that there is no limit to your authority, it's whatever you decide you want it to be, and that's the problem.

Ms. MCCARTHY. Certainly, that's never—I don't think that EPA has ever asserted jurisdiction in that way. We're working very hard with the Army Corps to understand what our history of knowledge is now, about where we find it important to require mitigation or to protect, and to make sure that we're as clear as possible in a final rule, so that people can be assured that we are not expanding. This is not unlimited, and to make sure that we not only say what's in, but we'd be a lot clearer about what is out.

Senator HOEVEN. I would encourage you to talk to farmers and ranchers, private landowners, as well as industries, the whole gamut of industry sectors on this rule, and I think you'll find that they're very concerned about it and that it is very much a problem for them.

Ms. MCCARTHY. I think, Senator, you're right. There are absolute concerns, and we're taking them with great seriousness.

COAL ASH LEGISLATION

Senator HOEVEN. Let me switch to coal ash legislation that I put forward on a bipartisan basis and will do so again. Actually, I have spent a lot of time with EPA working to get something that I think your people feel is workable.

I know you've come out with your regulation in regard to coal ash.

Ms. MCCARTHY. Yes.

Senator HOEVEN. But that regulation really relies on citizen lawsuits for enforcement. So my question is, wouldn't it better to actually pass legislation that addresses both coal ash recycling as well as impoundments and give the States primacy in terms of enforcement rather than relying on citizen lawsuits?

Ms. MCCARTHY. Senator, we continue to be available to provide technical assistance, and I will let Congress consider what they wish.

But the one thing I would just remind you is that I think there's a significant opportunity under the coal ash rule that we proposed. I think that the industry was pleasantly surprised by the final rule in how much we paid attention to the comments and made it reasonable and rational.

There is another mechanism that takes away this citizen lawsuit enforcement type system and puts it directly in the control of the States, and that's if States want to take control of these facilities in terms of regulating them themselves under their solid waste

master plans, which we would work with them very closely on. That would make it regulated by the State, not by the Federal Government, and that would ensure States having ability to even extend some of the timelines in our rule if they felt like that was most appropriate and the data indicated that that was advisable.

So there are other mechanisms that we're working with States on, but we're more than happy to continue to provide technical assistance on anything that you would be considering. Our judgment in the end will certainly be reserved to whether or not we think that it will achieve the environmental goals we're all looking for.

Senator HOEVEN. I understand that, but I'd encourage you to look at the legislation, because I think, in many respects, it accomplishes what we're trying to do both in terms of coal ash recycling, good environmental stewardship as far as management of impoundments, and does it in a framework that provides more certainty to the industry, which is a new benefit. So I'd encourage you to take a look at it.

Ms. MCCARTHY. Okay, sir. Thank you.

COAL FIRED ELECTRIC INDUSTRY

Senator HOEVEN. And ask you to work with us on it.

And Madam Chairwoman, if I may, just one final.

There's just a tremendous amount of regulation that has come out in regards to use of coal for energy production, coal fired electricity. In our State, we not only convert coal to electricity but also to natural gas, and you've actually been out to see the facility.

Ms. MCCARTHY. Yes.

Senator HOEVEN. And I appreciate you coming out. But there's so many regulations coming out that it's making it very difficult and very expensive for the coal fired electric industry to continue to operate their plants.

And that effect is that we're exporting more coal than ever, and other parts of the world are using coal to produce energy with environmental stewardship that is not as good as the environmental stewardship in this country. And it also is having the effect of slowing down our development and deployment of the new technologies that will produce energy both more cost effectively and with environmental stewardship.

So I'd ask, why can't you take a look at all of that and say, hey, we need to find a way to make sure that we're working with the industry to actually help them deploy these new technologies, and it has to be cost effective, right? Because if it's too costly, they just go out of business.

Ms. MCCARTHY. Yes.

Senator HOEVEN. So you defeat that development and deployment of the new technology. How do you actually help our industry work to deploy these new technologies?

Ms. MCCARTHY. Well, I certainly agree with you that we have to continue to work with the industry. I think, all in all, we have managed to get through a number of rules and to recognize the overlap between those rules and how they have to complement one another and be reasonable. I think even with the advent of the Clean Power Plan, we're still seeing, in 2030, a significant amount of coal being used.

The challenges of today are not just EPA regulations, but the marketplace itself, which, with the advent of inexpensive natural gas, coal, in many places, is noncompetitive. The age of our coal fleet now, it's going to be an average of 42 years or something. So there are challenges here where investments need to be made.

I think there are opportunities for technology advancements. We're trying to recognize some of those, and in the President's budget, it includes some incentives for DOE to be able to develop and help develop and support a new range of technologies, like carbon capture and sequestration, to see if there are opportunities to lower that cost even more than it is today, so that it's more readily available.

I have no doubt that innovation will happen. I think the thing that I'm hoping to do is to recognize that every fuel has an opportunity to continue. My rule just needs to be reasonable about making a path forward to reduce carbon pollution, but not to make choices, so that in the end, I'm not going to make a choice between what fuel is best. I'm going to look at reasonable strategies to work with States to lower carbon pollution while at the same time trying to support and send a very long-term market signal that innovation will be welcome, innovation will be supported, and we will, as a Federal Government, be able to support the technologies of the future.

Senator HOEVEN. Madam Chairwoman, thank you for the indulgence, going over my time.

Ms. MCCARTHY. Thank you, Senator.

ENVIRONMENTAL REGULATIONS

Senator MURKOWSKI. No, all important issues.

Administrator McCarthy, your words ring true to all of us. I don't think that we're trying to get to a different point. But, I must convey the sense of frustration, because as you're saying, we must use these technologies to get us to that point where we have cleaner water, cleaner air, some of what we see come out of the agency is so confounding to common sense.

One simple example that we have up in Alaska that I mentioned, that you and I have talked about, is our remote backup generators. We thought we had worked out an acceptable definition of what rural Alaska is and now we have a different Clean Air Act rule. We've got the sea ice rule. The definition of Alaska isn't updated.

So what it's doing, in this land of unintended consequences, is saying even though you have an older diesel generator that needs to be replaced, compliance with this new rule is so expensive, that our rural utilities are in a situation where they're not going to replace their older generators, no matter how much they might be polluting, because of these new compliance costs. You have this impact where you know where you want to go, but it's our own regulations that are limiting our ability to get there.

Another example is what we're doing with our small incinerators up north and trying to wrestle through this problem. On the one hand, you're saying, we're going to hold you to these standards for emissions for your air, which you're not going to be able to meet up there. And so the alternative is we're going to remove this waste by slinging loads through helicopters that are going to be going

back and forth over the North Slope. You want to talk about increased emissions.

And this is where the frustration is. What you've heard from members and the subcommittee here today is this frustration because we're on the ground with these folks. Whether it's the Crow Nation in Montana, farmers and ranchers in North Dakota, the people in Kentucky in the coal mines, or my miners in the 40 Mile District, they're saying, hello, is anybody using common sense back there in Washington, DC.

You tell us that you want us to weigh in. You want us to come to these hearings. You want us to submit my comments. Let me tell you, for these miners, these small operators out in the middle of the interior, for them to put pen to paper and put comments to some face back in Washington, DC, this is—you want to talk about true foreign correspondence, this is it. But they're willing to do it, because they are so desperate, and they so need to know that they are being heard.

You have said, we've got all these comments coming in, we're weighing them, we're considering them. But then at the end of the day, what we get are, well, we've got these new regulations. What they're doing is, they are either putting expectations that, in a place like Alaska or in places in rural America, it's impossible, if not highly unexpected, unanticipated, the costs are so high, you just can't get there from here.

And so we talk about flexibility. And you're using the word clarification. For so many of the people that we are hearing from, it's not clarifying. It is confusing and confounding and making people very angry at their government. Because they're saying, why aren't you guys listening to us? And as those who represent these farmers and ranchers and miners and Alaska natives and Indians, we're going back to them and saying, we're pounding as hard as we can on this one.

But I hope that you truly are listening to the concerns that people have. Nobody that I'm talking with is saying I want to rape, pillage, ruin, I don't care about the air, I don't care about the water. We do care. We do care. But we need to have the ability to provide for livelihoods. And sometimes, these livelihoods are not clean. You get pretty grubby as a placer miner. You probably get pretty grubby in the coal mines in Kentucky. But it's good, honest work for these people and their families.

They want to be there for clean air, clean water, but work with me, government. And, this is where our disconnect is, and this is where I have my constituents coming to me and saying, "Lisa, we're counting on you. You've got to shut the EPA down, and you got to do it yesterday." And I remind them that there is a clear and a legitimate role for the Environment Protection Agency.

We want our environment to be protected, and we need to have these permits issued. We want to have levels of monitoring. I want to work with Senator Reed to make sure that we have our revolving water funds. I want to make sure that we're doing our radon monitoring. There is a clear and legitimate role. But what we need to ensure is that clear and legitimate role has boundaries and definitions that are set in law by statute and that we're not pushing out regulations that go beyond.

Ms. MCCARTHY. Yes.

Senator MURKOWSKI. That go beyond.

Ms. MCCARTHY. Yes.

Senator MURKOWSKI. And that's the fear that we're seeing with the 111 rule and with WOTUS. Listen to our language, 111(d), WOTUS. What the heck?

Ms. MCCARTHY. I know.

Senator MURKOWSKI. What we're talking about is trying to find the balance between protection for our environment and care and concern for the men and women who are trying to support their families in economies that make sense in their regions.

So I meant to go through the host of other things that I've got. I mentioned the backup generators. I still want to talk about back haul program, our rural fuel storage tanks, the renewable fuel standards, and, of course what we're doing with the fish grinding. We've had an opportunity to talk about that in our exchange in the office.

I still need to get back to my constituent Paddy in Girdwood about fluoride.

Ms. MCCARTHY. Yes.

Senator MURKOWSKI. And you were going to work with me on that. But I implore you, listen to the people across the country on these issues that are so critical and important to them. We need to find this balance. We want to work with you, but I think you know the pressures that are on us to just stop it cold, stop it cold in its tracks. There's got to be some path forward, but you need to understand where the people are coming from on this.

Ms. MCCARTHY. I'll do the very best I can, and I absolutely share your goals. Thank you.

Senator MURKOWSKI. And with that, I'm going to turn my colleague, my ranking member.

SEQUESTER LEVEL

Senator UDALL. Thank you very much, Madam Chair.

And I know you've been here a long time, so I'll try to just run through two quick questions here.

Funding for EPA's day to day operations has remained close to the sequester level for 3 years. What have been the impacts on the Agency? Can you confirm that the fiscal year 2016 request would prioritize programs that help States and that basic operations would still remain at fiscally restrained levels?

Ms. MCCARTHY. Well, I think the Agency is doing the best it can. We are actually working very hard to make sure that we both maintain an adequate number of FTEs to get our job done. I think this budget reflects our ability to support our core programs and also to support some issues like the issue of climate that are so important for us to invest in and with the States.

But the level that we're looking at here is again only a level that is even falling short in terms of inflation adjusted numbers of what we were able to do in 2006. We all know nothing stood still in 2006. So I really would encourage you to continue to support this budget at this level so that we can maintain the core services that are so necessary to protect public health and the environment.

TSCA REFORM LEGISLATION

Senator UDALL. And Administrator McCarthy, I know you're aware that the Senate Environment and Public Works Committee reported the Toxic Substances Control Act (TSCA) reform legislation yesterday on a strong bipartisan basis.

Ms. MCCARTHY. Yes.

Senator UDALL. I introduced that bill with Senator Vitter and a broad array of bipartisan cosponsors. Our goal is to finally make some headway and give EPA the ability to set protective standards based on science to protect all Americans from toxic chemicals, especially the most vulnerable populations like pregnant women and young children. The American people would be shocked to know that EPA has not regulated a toxic chemical under the primary law in over 20 years.

I had a hearing on the bill. Your Assistant Administrator, Jim Jones, testified that the bill met all of this administration's principles for reform, and yesterday's markup involved even further key improvements.

Can you confirm that the bill as amended meets the EPA's goals for TSCA reform, and are you encouraged by the bipartisan momentum on this bill?

Ms. MCCARTHY. Well, I am aware that Mr. Jones identified a couple of areas where the bill fell short of the administration's principles, but I am also pleased that the most recent amendments really address those issues. I am encouraged that we're moving forward with a bipartisan bill.

ASBESTOS

Senator UDALL. Great. The poster child for TSCA reform is asbestos. The Fifth Circuit threw out EPA's asbestos rule in 1991 in a case called corrosion-proof fittings, citing the difficult standards in the law, which led us to the situation today of no real Federal chemical regulation.

Would the bill reported yesterday by the Environment and Public Works (EPW) committee give EPA the tools it needs to act on asbestos, and if a law is enacted, would EPA consider asbestos a strong candidate for early action?

Ms. MCCARTHY. Well, EPA would have the authority to make asbestos what we call now a high priority chemical, and with that, the Agency would be on a schedule for assessing and making regulatory determinations for asbestos.

FIVE-YEAR PLAN—NAVAJO MINING

Senator UDALL. Thank you. And then just finally, I'm not going to ask a question on this, but as you know, the last 5 years, there has been a 5 year working plan on Navajo mining, and it's a very extensive situation where there's been 4 million tons of uranium mined on the Navajo Nation from 1944 to 1986. And there are 500 abandoned mines, 145 in New Mexico.

And so we're at the point we started working on this with you. It was way back in the House where we really got all the agencies focused. And so I hope, as we move down the road, we can get into the next 5-year plan. There's still a lot of work to do. And I'll sub-

mit some questions for the record, but I'm not going to overburden us here at this point after an excellent hearing.

Senator UDALL. So Madam Chair, thank you for your courtesies. And thank you, Madam Administrator and your assistant there, Mr. Bloom, who seemed to be on the ball and giving you some good advice.

Ms. MCCARTHY. Yes, he was. Thank you.

Senator MURKOWSKI. And thank you, Administrator McCarthy. As you hear, we've got a lot of work to do.

Ms. MCCARTHY. We do.

Senator MURKOWSKI. I was informed, just back to Senator Leahy's point about the woodstoves, the woodstove exchange that we have had underway in the State of Alaska has been made possible through State grant moneys, not through EPA grants.

Ms. MCCARTHY. Yes.

ADDITIONAL COMMITTEE QUESTIONS

Senator MURKOWSKI. We have long tried to find some flexibility, as you know, working with the community there, and it's been difficult. And I think it's made even more difficult, because we haven't had much assistance from the Agency in terms of whether it's finding support for programs like a woodstove exchange or otherwise. So know that continues to be an extraordinarily pressing problem. I know you're very up to speed on that.

Ms. MCCARTHY. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Agency for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO HON. GINA MCCARTHY

QUESTIONS SUBMITTED BY SENATOR LISA MURKOWSKI

Question. At last year's EPA budget hearing, I asked how much more land in Alaska would be subject to the Clean Water Act as a result of the Waters of the U.S. (WOTUS) rule. Administrator McCarthy stated that she didn't know its "exact impact on Alaska." Do you know now, over a full year later, what the exact impact on Alaska would be according to EPA?

Answer. The EPA has not conducted analyses by State. As a general matter, the agencies believe that the proposed rule would more clearly define which waters are covered by the Clean Water Act, and which are not. In doing so, the agencies seek to reduce current uncertainty about whether or not particular waterbodies are, or are not, jurisdictional, and we expect similar clarity for Alaska.

Question. I also asked EPA to commit to holding at least one—if not more—public hearings on the WOTUS rule in Alaska, so that resource producers and other stakeholders could express their views and concerns directly to the agency. You said you would "take that back." Did EPA ever hold any public events on the WOTUS rule in Alaska, after that request?

Answer. The EPA did support efforts for Waters of the U.S. (WOTUS) rule public hearings or meetings with interested or affected parties in Alaska. One such meeting was held on May 21, 2014, in Anchorage. In addition, the EPA Region 10 conducted three different Webinars on November 5–6, 2014, for tribal government representatives, the general public, and State and local government representatives.

Question. In 2012, the EPA updated its national emission standards for reciprocating internal combustion engines in what is known as the RICE NESHAP rule. I worked with the EPA to find an acceptable definition of "rural Alaska." After substantial data collection, the EPA determined that Alaska utilities not located in the urban Railbelt could not afford to buy new diesel generators and did not need to do so on air quality grounds.

EPA collected substantial data in 2012 when the definition of rural Alaska was updated in the Reciprocating Internal Combustion Engines (RICE) National Emission Standard for Hazardous Air Pollutants (NESHAP) rule. Why can't you use that

data to update the Compression Ignition (CI) Internal Combustion Engines (ICE) rule so that rural Alaskan utilities have a sensible option to replace their diesel generators?

Answer. The EPA received a letter from the Alaska Department of Environmental Conservation (ADEC) in late 2014 requesting that the definition of remote Alaska used in the New Source Performance Standards (NSPS) for Stationary Compression Ignition Internal Combustion Engines be updated to be consistent with the definition that was adopted in the 2013 RICE NESHAP amendments. Since receiving the letter, the EPA has been working with ADEC and the Alaska Energy Authority (AEA) to gather additional information to explain why the considerations that prompted the change in the NESHAP, which applied to existing engines, were also applicable considerations for the new engines regulated by the NSPS. Based on the additional information provided by ADEC and AEA, the EPA is considering proposing amendments to the NSPS to align the definition of remote Alaska in the NSPS with the definition in the NESHAP.

Question. As of October 1, 2016, EPA will no longer allow Indian General Assistance Program funds to be used for the solid waste implementation program. I recognize that this decision stems from an Inspector General report stating that the use of funds in this manner violated the letter of the law. Have you examined the definition of “capacity” to determine whether there may be an administrative option for continuing with traditional activities in Alaska?

If you do not believe there is a solution outside of the legislative process, please provide me with language that would allow for the back haul program to continue with traditional solid waste collection.

Answer. The 2013 update to the GAP Guidance clarified the agency’s position that funding general government services fall outside the purposes of GAP, which are to develop tribal government capacity to implement programs administered by the Environmental Protection Agency and the development and implementation of solid and hazardous waste programs for Indian lands. As reflected in the GAP Guidance, EPA interprets capacity building activities to include training staff; developing codes, ordinances, regulations, and management plans; creating inventories; monitoring and assessing baseline conditions; conducting assessments; and enhancing compliance and enforcement capabilities. Under the GAP Guidance, solid waste implementation activities funded under GAP do not include costs for delivering tribal government utility services, such as trash collection and recycling services, or the operation and maintenance of sanitation facilities.

EPA believes this limited restriction in the use of GAP funds is consistent with the appropriate uses of GAP in the context of supporting tribal capacity for implementing environmental regulatory programs. Few tribes have achieved sufficient capacity to administer Federal environmental regulatory programs. At current funding levels, GAP resources are inadequate and tribes struggle to recruit and retain qualified environmental professionals. Tribes across the country face a myriad of serious environmental and human health threats; contamination resulting from improper solid waste management is only one facet of the challenges faced by tribes, and environmental protection in Indian Country generally lags behind the rest of the country.

The President’s fiscal year 2016 budget proposed a \$31 million increase in GAP resources to bring total funding for tribal capacity building to \$96 million. This increase in funding would raise the average allocation to tribes, allowing them to hire environmental professionals who can develop sustainable and robust environmental programs. Without this baseline environmental program capacity developed through GAP, EPA will continue to see limited progress establishing sustainable tribal environmental protection programs.

EPA acknowledges that many tribes lack funding to provide sustainable utility services, including solid waste collection and recycling services and the operation and maintenance of sanitation facilities. Therefore, EPA is continuing to explore near term administrative flexibilities to support tribes in protecting their people and their environment from risks from improper solid waste management.

EPA has provided a temporary, 3-year transition period (covering GAP awards made in fiscal year 2014, 2015 and 2016) to give grantees additional time before the restriction to use GAP funding for trash and recycling services is implemented. This transition period was originally 2 years, but was recently extended for another year (for a total of 3 years) to provide tribal grantees and EPA more time to explore alternative funding strategies and long-term sustainable solutions. Thus, EPA may award financial assistance agreements under GAP in fiscal years 2014, 2015 and 2016 that contain trash and recycling service activities through fiscal year 2017.

The agency also is collaborating currently with Alaska Native Villages, other Federal agencies, and the State of Alaska to develop comprehensive and long-term solutions for sustainable solid waste management on tribal lands.

- EPA is a member of the “Infrastructure Task Force” along with the Indian Health Service, Department of Agriculture, Department of Housing and Urban Development, and Department of the Interior’s Bureau of Indian Affairs. The purpose of the task force is to improve Federal coordination to deliver sanitation solutions to Indian Country.
- In addition, EPA recently invested over \$500,000 to assess solid waste management options for tribes in Alaska, including an assessment that will help estimate backhauling costs per household, identify backhauling options, and support the development of MOUs between tribes and backhaulers.
- EPA is also exploring collaborative options for sustainable solid waste management in Alaska. Partners include Alaska Native Villages, Federal agencies (including the Indian Health Service and Department of Agriculture), the Alaska Department of Environmental Conservation and local agencies, businesses, and not-for-profit organizations.
- Sanitation facility operations, maintenance, and utility service delivery costs (i.e., solid waste and recovered materials collection, storage, transportation, and disposal costs) also may be expressly authorized under programs administered by the Department of Health and Human Services and the Department of the Interior.

EPA recently provided technical assistance outlining options for congressional action on this topic in response to a request from the Senate Appropriations Committee. The agency welcomes future opportunities to discuss the issue of environmental protection program implementation by tribes and to provide technical assistance to Congress as requested.

Question. There are 1,600 abandoned oil tanks in Alaska that are safety hazards, and in some cases environmental hazards. More than a third of these tanks are from former Federal facilities. What resources does the EPA have to help us clean up and dispose of the abandoned oil tanks? In particular, is there any program within the EPA that can help the State of Alaska deal with the abandoned oil tanks that come from former Federal facilities?

Answer. The EPA has Clean Water Act Section 311 (CWA 311) response authority, and may access the Oil Spill Liability Trust Fund (OSLTF), when there is a discharge, or substantial threat of discharge, of oil to navigable waters. EPA’s authority under CWA 311 is limited to navigable waters in the inland zone. For EPA to exercise its CWA 311 authority, the abandoned tanks must contain oil and that oil must have discharged, or be under a substantial threat of discharge, into or upon inland navigable waters, adjoining shorelines, or into or upon the waters of the contiguous zone, or which may affect natural resources under the exclusive management authority of the United States.

Grant funding may be available under the Brownfields program to assist in certain circumstances dictated by Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Sections 104, 128, and other relevant provisions, however, grants awarded under section 104 are subject to a number of eligibility and ranking criteria. Among the statutory limitations are the following: (1) Alaska tribes are ineligible to apply for Brownfields competitive grant funding and (2) all sites contaminated with petroleum will have to satisfy the petroleum site eligibility requirements in addition to other Brownfields requirements stated in the law. For Alaska or Alaskan tribes awarded grants under section 128, cleaning up abandoned oil tanks must meet the statutory criteria for establishing or enhancing a voluntary cleanup program/tribal response

Question. If the court injunction is lifted before the Inspector General’s report is completed, would EPA proceed with its proposed 404(c) restrictions? Do you think it’s appropriate for EPA to take further action, if your IG is still conducting an open investigation?

Answer. The EPA will act in a manner that is consistent with decisions of the district court and in support of the Inspector General’s review.

Question. Two of my biggest concerns with EPA’s actions at Pebble relate to the precedent that would be set and the standard that would govern future preemptive actions in Alaska or other States.

- During this administration, has EPA considered preemptive action—in the form of restrictions or an outright veto—under section 404(c) for any other project in Alaska or elsewhere?
- Can you assure us that EPA will not target additional projects for preemptive restriction or veto in the future?

—If EPA does take preemptive action in the future, how will that be decided? What standards govern whether or not EPA will listen to, say, a national environmental group that wants to stop a project?

Answer. The EPA works constructively with the Corps, the States, and other partners to assist applicants in developing environmentally sound projects in cases where a discharge of dredged or fill material into waters of the U.S. is proposed. The procedures for implementation of section 404(c) provide for a science based and transparent review of projects, with opportunity for meaningful dialogue among the EPA, the Corps, the permit applicant or project proponent, the State, and the public. Key aspects of the 404(c) review process include an opportunity for discussion between the EPA and the project proponent and opportunities for public involvement.

The EPA's careful use of its 404(c) authority is demonstrated by the fact that the agency has completed just 13 Final Determinations since 1972. To put this in perspective, over the same period of time, the Corps of Engineers is estimated to have authorized more than 2 million activities in waters of the U.S. under the CWA Section 404 Regulatory Program. As these numbers demonstrate, the EPA has worked successfully with the Corps and permit applicants to resolve concerns without exercising its section 404(c) authority in all but a miniscule fraction of cases. We expect this judicious use of 404(c) to continue.

Question. Very few of us understand EPA's implementation of the Renewable Fuel Standard. It is very telling that at the hearing, neither of us knew what the RFS for 2014 is going to be even though the year has already been over for 4 full months.

How is it that EPA has been able to finish discretionary rulemakings—such as Tier 3 and climate—but unable to finish the annual rules specifically required by Congress for the RFS, to establish renewable volume obligations?

Approximately how many people at EPA are working on the RFS rule, which Congress required? And how many are working on EPA's climate rules, which Congress did not order?

Answer. The EPA understands the importance of the RFS program, and is committed to the program's goals, namely, reducing emissions of greenhouse gases from the transportation sector and increasing American energy security. The agency is aware that the agricultural community, as well as renewable fuel producers and other stakeholders, have invested significant time, energy, and resources into ensuring that the objectives of the RFS program become a reality. Renewable fuel use has increased substantially over the past decade, and we have seen significant advancements in renewable fuel production capacity and efficiency. Congress intended most of the growth in the program over time to come from advanced biofuels, and we have also seen forward progress in this area, including recent advancements in the commercial-scale production of cellulosic biofuel.

The annual rule-setting process under the statute has proven to be very challenging, and we recognize that the delay in issuing the 2014 and 2015 standards has exacerbated uncertainty in the market for both renewable fuel producers and obligated parties. The magnitude of the statutory volumes for 2014, coupled with real-world constraints in the ability of the marketplace to produce and utilize renewable fuels, introduced new and challenging issues such that by the time the proposal could be finalized, the facts on the ground had shifted. Any standard issued at that point could no longer influence market choices, so a re-proposal was necessary. However, the EPA is committed to getting this program back on the statutory timeline to provide needed market certainty and to support the development and use of renewable fuels. We recently issued a proposal to set the RFS standards for 2014, 2015, and 2016, and the biomass-based diesel applicable volume for 2017 (80 FR 33100, June 10, 2015); we intend to finalize these provisions by November 30, 2015.

The EPA follows the authorities and responsibilities Congress provides under the Clean Air Act when promulgating and implementing rules. The work associated with the RFS stretches across several government agencies in addition to the EPA, including USDA and DOE. Within the EPA, we have 3 to 4 Full-Time Equivalent (FTE) that work on the RFS program's annual rules, with an additional 3 to 4 program staff and attorneys providing support depending on the stage of the rule-making.

Question. I am a strong believer that the EPA must use the best available science when making determinations that will have a major impact on public health. The forthcoming Integrated Risk Information System (IRIS) assessment related to formaldehyde is one example of where the EPA must be sure it gets it right particularly considering the critical recommendations made by the National Academy of Sciences after the release of the draft assessment. A 2010 UC Berkeley study of Chinese workers by Zhang et al. has been a key component of the EPA's assessment of form-

aldehyde. It is my understanding that, while the study has been criticized in the published literature, its findings have never been replicated.

Given the importance of the EPA's formaldehyde assessment to public health and recognizing the need to ensure that the final document is scientifically defensible; will the Agency consider collaborating with a team of experts and support an independent study to reproduce the findings of the Zhang study before finalizing the IRIS assessment of formaldehyde?

Answer. The EPA is reviewing numerous studies that examine the relationship between formaldehyde inhalation and potential carcinogenic effects. In conducting its assessment, the EPA will closely examine the database as to possible mechanisms by which formaldehyde might cause leukemia or lymphomas and include all relevant peer-reviewed published literature available to us consistent with the IRIS stopping rules. These stopping rules and the considerations for inclusion of new studies are described in detail at http://www.epa.gov/iris/pdfs/IRIS_stoppingrules.pdf. The 2010 paper (Zhang et al.), and a subsequent 2015 publication (Lan et al.), by researchers at UC Berkeley and collaborators from the National Cancer Institute, examine evidence as to whether formaldehyde exposure could cause genotoxicity in a particular type of cell (myeloid progenitor cells) circulating in the bloodstream. There are also other studies of the relationship between inhaled formaldehyde and circulating blood cells of other types (mature, non-progenitor cells).

While it can be helpful to identify known or accepted mechanisms by which a chemical could cause an increased cancer risk, it is not necessary under EPA's Cancer Guidelines in order to determine whether a chemical causes a carcinogenic effect. The National Research Council (NRC) took a similar view in their 2014 review of the National Toxicology Program's Report on Carcinogens, in which the NRC wrote that "while it would be desirable to have an accepted mechanism that fully explains the association between formaldehyde exposure and distal cancers, the lack of such mechanism should not detract from the strength of the epidemiological evidence that formaldehyde causes myeloid leukemia."

The EPA's revised draft assessment will undergo public comment and independent scientific peer review. A major topic in peer review will be the overall weight of the evidence from the epidemiology studies of leukemia or lymphomas in exposed workers, and considering any mechanistic information from studies in exposed animals or humans. We fully expect the strengths and limitations of the existing information, including mechanistic data in cells and tissues relevant to leukemia and lymphomas, will be a focus in upcoming scientific peer reviews. Thus, based on there being an extensive database on formaldehyde and a strong public health interest in assessing the potential health effects of formaldehyde, the EPA believes it is appropriate to proceed with evaluating the existing body of data regarding formaldehyde.

Question. While I am supportive of the goals of the EPA's IRIS program, we need to ensure that assessments use the best available science and reflect the highest standard of scientific inquiry. The subcommittee has been interested in the EPA's efforts to implement the Chapter 7 recommendations from the National Academy of Sciences (NAS) report that offers some "suggestions for improvements" in the IRIS process.

The NAS recommends that, within the process, the EPA clearly provide two dose-response estimates, a central tendency estimate and its traditional lower-bound estimate that is designed to be an over-estimate of the potential hazard. In its study, the NAS noted that a central tendency estimate might improve public risk communication and is consistent with the EPA's own guidelines. Please provide the subcommittee with an update on your agency's ability and commitment to implement this particular high priority reform in the IRIS program and whether the EPA intends to provide central tendency estimates for completed assessments.

Answer. The EPA has provided central estimates of cancer risk in IRIS assessments since 2007 as recommended in the OMB memorandum M-07-24 (*Updated Principles for Risk Analysis*). The IRIS Program is committed to continuing to include information on central estimates of risk and will clarify their presentation in future assessments.

Question. Does the EPA have an established process for incorporating new scientific analyses and for updating IRIS assessments when new data is available? Within this process, what are the thresholds that must be met in order to initiate an update?

Answer. One of the challenges the IRIS Program faces is to ensure that the most up-to-date scientific information is incorporated in assessments. Recently, the IRIS Program announced the establishment of rules for the IRIS process which transparently describe criteria for the inclusion of new studies during the development

of ongoing assessments. These stopping rules and the considerations for inclusion of new studies are described in greater detail at http://www.epa.gov/iris/pdfs/IRIS_stoppingrules.pdf.

The EPA is at the beginning stages for developing a process to update finalized assessments that are on the IRIS database that may warrant reevaluation due to the availability of significant new research or methods after the existing assessment was completed. Details on the development of the IRIS update project and how the public can be involved will be available on the IRIS Program's Web site (www.epa.gov/iris).

Question. I understand there are several outstanding trade related issues dealing with pesticide standards that are disrupting U.S. exports of specialty crops to the EU. What is the EPA doing to foster the expedited development of acceptable and science-based Maximum Residue Limits (MRLs) to expand U.S. agricultural exports?

Answer. The EPA works diligently with numerous entities around the globe on matters concerning the setting of tolerances or pesticide residue limits to increase the likelihood that the US MRL decisions are harmonized with those of other nations. For example, the EPA works with U.S. stakeholders, European Union (EU) Member States, the European Food Safety Authority (EFSA) and the EU Commission to ensure that there are no data gaps or unnecessary lapses that prevent MRLs from being adopted as expeditiously as possible. EPA regularly shares its risk assessments and science methodology to assist the EU in establishing its MRLs. In ongoing negotiations with the EU on the Transatlantic Trade and Investment Partnership (TTIP), the EPA has worked closely with stakeholders to develop U.S. proposals designed to address current trade concerns as well as prevent future trade concerns. EPA is a member of the U.S. delegation to the World Trade Organization's Sanitary and Phytosanitary Standards Committee and is an active member of other interagency teams dealing with SPS issues. EPA is also very active in the Codex and OECD, where international standards and guidance for pesticides are established.

In addition to the work with the EU, the EPA has been very instrumental in resolving MRL-related trade concerns with Korea, Japan, Indonesia, Taiwan, Mexico, Peru, Canada, New Zealand, Australia, South Africa, Hong Kong, Chile, India, Brazil, China, Vietnam and many other countries by providing policy and technical expertise on a bilateral or multilateral basis. In many cases, the EPA has provided its risk assessments as the basis for setting tolerances in these countries and in Codex. EPA also organizes and participates in global joint reviews as a means to promoting harmonized MRLs. The EPA will continue to work on these issues as it facilitate trade for U.S. farmers and reduces barriers to the adoption of pesticides with superior human health and environmental profiles.

Question. In January 2015, the administration announced plans to develop additional regulations aimed at reducing methane emissions from the oil and gas industry. The upcoming EPA rulemaking immediately follows the new oil and gas air regulations EPA that went into effect in January 2015 and coincides with new ozone regulations the agency is pursuing that also impact the oil and gas sector. EPA is planning to move forward with some type of methane regulation in spite of the fact that EPA and academic studies estimate that methane emissions from the oil and gas industry have declined significantly at the same time that oil and gas production has skyrocketed.

Is EPA formally engaging the States regarding potential methane regulations, available technology, and implementation costs?

What is the estimated cost and staff required in fiscal year 2015 and fiscal year 2016 for drafting a proposed rule and supporting materials and for reviewing public comment on the various aspects of a proposed rulemaking?

Has EPA developed a "social cost of methane"? If such a metric has been developed, will the agency use the metric in calculating and justifying the health benefits for new regulations aimed at reducing methane emissions from the oil and gas sector?

Answer. The January 2015 announcement marked the beginning of the agency's process to develop proposed standards for methane and VOC emissions for new and modified sources in the oil and gas sector. As is the case with all of our regulatory actions, the EPA will develop a robust regulatory impact analysis that will include, among other issues, a rigorous analysis of projected future emissions from this sector that would be avoided by the implementation of the proposed standards. To ensure the agency's projections are based on the very best data available, EPA's analysis will take into account additional information from industry, States, and other stakeholders and will be consistent with statute, Executive order, and OMB guid-

ance. The agency's analysis will be issued along with a proposal this summer and will be available for public review and comment.

The EPA has also engaged with State and tribal partners early on in the pre-proposal stage of this rulemaking through a series of outreach calls aimed at helping inform the EPA of concerns from the regulated community. The EPA also convened a Small Business Advocacy Review Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements.

Implementation of a proposed rulemaking crosses multiple fiscal years and regulatory programs, making resource estimates for any one rulemaking particularly difficult.

QUESTIONS SUBMITTED BY SENATOR TOM UDALL

URANIUM CLEANUP ON NAVAJO LAND

Question. From 1944 to 1986, 4 million tons of uranium ore were mined from lands belonging to the Navajo Nation in Arizona, Utah, and New Mexico. More than 500 abandoned uranium mine claims remain in Navajo Nation, including 145 in New Mexico. EPA has been working in partnership with other Federal agencies to clean up contaminated sites and structures.

- What progress did EPA make during the first cleanup plan?
- What are EPA's goals for the second round of cleanup?
- How much is set aside in the fiscal year 2015 budget for cleanup, and when will estimated funding be identified for fiscal year 2016?
- EPA materials note that the highest priority site is Church Rock Mine near Gallup, New Mexico. What is the timeframe expected to complete cleanup of this site?

Answer. Under the initial 2008–2012 5-Year Plan, Federal agencies invested more than \$100 million, including \$50 million provided by the EPA, to reduce the highest risks to human health on the Navajo Nation. The EPA remediated 34 contaminated homes and 18 yards, provided safe drinking water to 1,825 families in partnership with the Indian Health Service, assessed 521 former mines, and conducted urgent cleanup actions at 9 mine claims. A full report of the accomplishments is available on-line: <http://www.epa.gov/region9/superfund/navajo-nation/pdf/NavajoUraniumReport2013.pdf>.

The 2014–2018 5-Year Plan builds upon the work of the first 5-Year Plan, makes adjustments based on information and lessons learned during this period, and plans the next steps in addressing the most significant risks to human health and the environment. Specifically, the EPA will remediate additional contaminated homes, increase water infrastructure in mining areas, clean up 46 priority mines, clean up Northeast Church Rock, and expand interagency outreach. For more information, see: <http://www.epa.gov/region9/superfund/navajo-nation/5-yr-plan-2014.html>.

The EPA also will begin cleanup of the approximately 50 Kerr-McGee mines located on or very near the Navajo Nation. On April 3, 2014, the United States entered into a settlement agreement with Anadarko Petroleum Corporation and some of its affiliates that provides nearly \$1 billion for the EPA to clean up the 50 mines operated by Kerr-McGee. This is part of the largest environmental cleanup settlement in U.S. history.¹ Use of these funds is limited to 50 of the more than 500 abandoned uranium mines on the Reservation.

On May 1, 2015, the U.S. Government and the Navajo Nation entered into a settlement agreement that provides more than \$13 million to assess 16 additional high priority mines.² This is a significant step forward in addressing high priority abandoned uranium mines on the Navajo Nation.

In fiscal year 2015, the EPA estimates \$4.4 million of appropriated resources will be available plus an additional \$5.3 million in Superfund Special Accounts from the Anadarko settlement. The agency will determine fiscal year 2016 funding allocations after congressional appropriations legislation is enacted.

On April 27, 2015, the EPA and the United Nuclear Corporation and General Electric Company (UNC/GE) entered into a settlement agreement that requires UNC/GE's complete the design of the Northeast Church Rock Mine (NECR) Site

¹ Please see: <http://www2.epa.gov/sites/production/files/2014-04/documents/fraud-settlement-kerrmcgee-tronox.pdf>

² Please see: <http://www.justice.gov/opa/pr/us-will-pay-132-million-cleanup-evaluation-16-abandoned-uranium-mines-navajo-nation>.

cleanup and disposal facility at the UNC Mill Site. This settlement is a significant milestone in the process to clean up the NECR Mine.

The EPA estimates this design phase will be completed in 2 to 3 years, and the Nuclear Regulatory Commission (NRC) estimates another 2 to 5 years to secure the required NRC license amendment, given the time required for safety and environmental reviews and a potential public hearing. Those dates give an estimated completion of between 2019 and 2023. These completion dates could vary, however, if circumstances do not unfold as anticipated.

MEXICO BORDER WATER INFRASTRUCTURE

Question. EPA's budget request includes \$5 million for the Mexico Border Water Infrastructure program. This amount is the same as the fiscal year 2015 level. This program is critical for border States like New Mexico because it provides drinking and wastewater services—often for the first time—to underserved areas in both the United States and Mexico.

—What is approximate estimated need for water infrastructure projects on the U.S.-Mexico border?

—What does EPA plan to do to meet the long-term needs of our border communities?

Answer. EPA uses the results of the last U.S.-Mexico Border Water Infrastructure Program (BWIP) grant solicitation to estimate existing border infrastructure needs. The fiscal year 2011 request for proposals resulted in 200 applications with an estimated construction cost of \$800 million; funding is available for the construction of 20 of those projects totaling \$156 million.

U.S. border communities can and do work with their State partners to access funds through the Clean Water and Drinking Water State Revolving Funds to help meet their water infrastructure needs. The U.S.-Mexico Border Water Infrastructure program has built strong partnerships with U.S. and Mexican Federal, State, and local governments to address the water and sanitation needs of underserved border communities by leveraging resources and coordinating policies and procedures. As a funder of last resort, EPA's Border Environmental Infrastructure Program funds projects that would most likely not proceed without this support. EPA will continue to work with our program partners to maximize existing resources while requesting funding at a level that is balanced by the many competing funding priorities across the Agency.

QUESTIONS SUBMITTED BY SENATOR MITCH MCCONNELL

CLEAN POWER PLAN

Question. Under EPA's 111(d) rule, it is my understanding that if a State submits a State Implementation Plan (SIP) and if EPA accepts that SIP, then all elements of that SIP become federally enforceable. Is that correct?

With regards to Building Block 2 of the Clean Power Plan, if a State fails or refuses to submit a State plan under EPA's Section 111d rule, does EPA have Federal Implementation Plan (FIP) authority to require greater dispatch rates of natural gas combined cycle units in that State? If so, what is the source of that authority?

With regard to Building Block 3, if a State fails or refuses to submit a State plan under EPA's Section 111d rule, does EPA have FIP authority to create and impose a renewable energy standard on that State? If so, what is the source of that authority?

With regard to Building Block 4, if a State fails or refuses to submit a State plan under EPA's Section 111d rule, does EPA have FIP authority to create and impose mandates on energy efficiency? If so, what is the source of that authority?

Answer. Under CAA Section 111(d), a State must submit its plan to the EPA for approval. States will have the flexibility to choose from a range of numerous approaches and measures, and this final rule allows and encourages States to adopt the most effective set of solutions for their circumstances, taking into account cost and other considerations. Once a State receives the EPA's approval of its plan, the plan becomes federally enforceable.

To maximize the range of choices available to States in implementing the standards and to utilities in meeting them, the EPA established interim and final state-wide goals in three forms: (1) a rate-based State goal measured in pounds per megawatt hour (lb/MWh); (2) a mass-based State goal measured in total short tons of CO₂; and (3) a mass-based State goal with a new source complement measured in total short tons of CO₂. States may choose between two plan types to meet their goals:

- An Emission standards plan includes source-specific requirements ensuring all affected power plants within the State meet their required emissions performance rates or State-specific rate-based or mass-based goal.
- A State measures plan includes a mixture of measures implemented by the State, such as renewable energy standards and programs to improve residential energy efficiency that are not included as federally enforceable components of the plan. The plan may also include federally enforceable source-specific requirements. The State measures, alone or in conjunction with federally enforceable requirements, must result in affected power plants meeting the State's mass-based goal. The plan must also include a backstop of federally enforceable standards on affected power plants that fully meet the emission guidelines and that would be triggered if the State measures fail to result in the affected plants achieving the required emissions reductions on schedule. States may use the final model rule, which EPA proposed on August 3, for their backstop.

If a State does not submit an approvable plan, then the EPA will implement a plan for that State. Section 111(d)(2)(A) authorizes the EPA to promulgate a Federal plan for any State that “fails to submit a satisfactory plan” establishing standards of performance under section 111(d)(1). Please refer to the Agency's Legal Memorandum Accompanying Clean Power Plan for Certain Issues (<http://epa.gov/airquality/cpp/cpp-legal-memo.pdf>) for further associated legal basis.

In response to requests from States and stakeholders since the proposed Clean Power Plan was issued, the EPA proposed a Federal plan to implement emission guidelines for power plants under section 111(d) of the Clean Air Act and affected power plants that began construction on or before January 8, 2014. Comments on the proposed Federal plan requirements, identified by Docket ID No. EPA-HQOAR-2015-0199, must be received within 90 days after the date of publication in the Federal Register.

Question. The Clean Power Plan, as unveiled in June of 2014, touts multi-State cooperative agreements at various points throughout the plan as a feasible option for States in the drafting of their State plans. Most recently in February 2015, EPA's Acting Assistant Administrator for Air and Radiation Janet McCabe told the Federal Energy Regulatory Commission (FERC) that multi-State agreements are a significant part of EPA's strategy to implement the Clean Power Plan (CPP).

As such, compliance with a multi-State agreement must be required by a SIP that is ultimately approved by the EPA under the Clean Air Act. As you are aware, SIPs impose mandatory, binding obligations on sources in a State. Regarding compacts specifically, without a compact, a State might be at risk if another State involved in the compact could not meet its commitments. This is why the Constitution provides for compacts and is why they are required to be approved by Congress. As such, are you aware that section 102(c) of the Clean Air Act requires congressional consent for such cooperative agreements? On what basis could your agency effectively argue that section 102(c) does not apply to the CPP?

Answer. The EPA provided unprecedented outreach on the proposed Clean Power Plan and has addressed the 4.3 million comments it received in response to the proposal. States will develop and implement plans that ensure that the power plants in their State—either individually, together or in combination with other measures—achieve the interim CO₂ emissions performance rates over the period of 2022 to 2029 and the final CO₂ emission performance rates, rate-based goals or mass-based goals in 2030 and thereafter. The “multi-State plans” envisioned under this rule are sets of independently and voluntarily adopted and enforced State laws that mirror (or allow for interaction with) other State laws. States are allowed to cooperate in this way without obtaining congressional approval under either the Compact Clause¹ or section 102(c) of the CAA.

QUESTIONS SUBMITTED BY SENATOR BILL CASSIDY

DIESEL IMBALANCE

Question. For refiners who produce significantly more diesel than gasoline, the Renewable Identification Numbers (RINS) situation is further exacerbated by changes implemented in the expanded Renewable Fuel Standard (RFS2) by EISA 2007 when diesel fuel was added. Ethanol can't be blended into diesel, and customers are reluctant to buy diesel with much biodiesel added. At most, 2–5 percent can be blended, depending on the location and climatic conditions. Yet, the total renewable factors are applied to diesel production just as to gasoline, leaving the obli-

¹ U.S. Const. art. I, § 10, cl. 3.

gated parties (the refiners) no choice but to purchase the additional RINS required with no better economic option to blend and separate the RINS.

As the EPA works to finalize the proposed Renewable Volume Obligation (RVO) under the consent decree, are you considering the disadvantage placed on refiners of diesel? Gasoline and diesel should be decoupled in the RVO calculation.

Answer. The EPA implemented the statute as Congress prescribed in such a way that the impacts on all obligated parties are proportional to their fuel production and import. As a result, the burden on diesel refiners is no different than that placed on any other refiner or importer. In recognition of the fact that different obligated parties are in different markets with different business plans, EPA provided in the RFS regulations a range of compliance options to all obligated parties. The RIN system itself was designed specifically to allow all obligated parties to take advantage of the flexibility of the marketplace to ease compliance and minimize overall compliance costs. If an obligated party does not choose to blend the requisite amount of renewable fuels themselves, they can purchase RINS on the open market from those that have accumulated excess RINS.

Question. Last week during your address at IHS CERA Week you stated that the administration's Clean Power Plan makes economic sense because "you're already making those investments." "Industry is right now investing in clean energy because it's the marketable thing to do."

It seems based upon your comments that you agree that industry decisions to invest in all forms of energy is market driven and not due to government mandates.

Would you agree that market driven investments in diverse forms of energy to provide low cost choices to Americans is preferable to government mandates that may limit choice?

Power Plan.—This \$4 billion is not included in the EPA's \$8 billion budget request and would need to be authorized by Congress. Congress is limited by the discretionary spending caps in the Budget Control Act. Does the Agency have a proposal for where it believes the additional funding should come?

Answer. Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions. The proposed rule builds on what States, cities and businesses around the country are already doing to reduce carbon pollution and establishes a flexible process for states to develop plans to reduce carbon dioxide that meet their needs.

The fiscal year 2016 President's budget includes an incentive fund for States choosing to go beyond the Clean Power Plan, which will be finalized this summer. The Clean Power State Incentive Fund will provide \$4 billion to support States exceeding the minimum requirements established in the Clean Power Plan for timing of State plans and the pace and extent of carbon pollution reductions from the power sector. This funding will enable States to invest in a range of activities that complement and advance the Clean Power Plan, including efforts to address disproportionate impacts from environmental pollution in low-income communities and support for businesses to expand efforts in energy efficiency, renewable energy, and combined heat and power through, for example, grants and investments in much-needed infrastructure. The President's budget includes funding for the Clean Power State Incentive Fund within the mandatory budget (please refer to page 1132 of the fiscal year 2016 President's budget appendix found at <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/epa.pdf>).

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It seems based upon your comments that you agree that industry decisions to invest in all forms of energy is market driven and not due to government mandates.

Would you agree that market driven investments in diverse forms of energy to provide low cost choices to Americans is preferable to government mandates that may limit choice?

Answer. Response same as previous question above.

Question. Since 2010, President Obama has failed to pass his signature cap-and-trade legislation even with a previous Democratically controlled Senate. Among the concerns was that the expensive, onerous mandates placed on manufacturers and energy producers would destroy jobs and lead to increased energy costs for consumers and businesses.

Heeding the concerns of the American people, Congress chose not to pass such destructive and far-reaching mandates. Undeterred, President Obama has taken an alternate route of pursuing his cap-and-trade and other energy policies through back door regulations at the Environmental Protection Agency (EPA).

In October, EPA will issue a final rule to regulate ground level ozone. However 2 months ago, EPA finalized the implementation rule for the 2008 standard—75 parts per billion—but just announced in November 2014 that it will lower that 2008 standard to a level between 65 and 70 parts per billion. Since 1980, the United States has reduced ozone pollution by 33 percent according to EPA's own data.

As I mentioned in my opening statement, I have spent nearly my entire professional career in medicine. When working with patients determinations on the appropriate treatment to administer or medications to prescribe must be based upon what we know and not necessarily what we think. I had an opportunity to see many patients suffering from the effects of unemployment and how that impacts their quality of life and health.

- Would you agree that employment is an important factor in evaluating the mental and/or physical health of an individual?
- How did the Agency consider those health impacts when it was determining “projected” health outcomes of a revised ozone standard?
- Does EPA examine the interconnectivity between employment and mental health issues such as depression and suicide or the linkage between employment and heart attack or stroke when it examines health benefits of a proposed rule?

Answer. The U.S. Supreme Court ruled in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), that under section 109 of the Clean Air Act, the EPA may not consider the costs of implementation in setting National Ambient Air Quality Standards (NAAQS). The Court indicated specifically that EPA was not to consider potential job losses due to implementation of a standard, even if such job losses “might produce health losses”. 531 U.S. at 466. Moreover, if EPA were to consider such costs, it would be “grounds for vacating the NAAQS, because the Administrator had not followed the law”. *Id.* at n. 4.

Based on a significantly expanded body of scientific evidence, including more than 1,000 new studies since the last review of the standards, the EPA is proposing that the current primary ozone standard set at a level of 0.075 ppm is not requisite to protect public health with an adequate margin of safety, and that it should be revised to provide increased public health protection.

Question. In addition, Dr. Julie Goodman from the Harvard School of Public Health wrote an op-ed in the Wall Street Journal last year where she said, “Most studies examining connections between ozone and health effects do not adequately account for smoking or other factors such as diet and exercise that could contribute to diseases attributed to ozone. By not fully considering these other factors, the EPA assumes that ozone causes more health effects than what the science supports.”

How did EPA factor in diet and exercise when considering health outcomes of a lower ozone standard?

Answer. In evaluating the mechanisms by which ozone causes health effects, the EPA uses a weight of evidence approach and evaluates all types of studies, many of which adequately account for factors such as smoking. There is a large body of evidence that has examined the association between ozone-related respiratory health effects and diet, smoking, and obesity (related to exercise). These associations are discussed in the Integrated Science Assessment (section 8.4, pp. 8–30, <http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492#Download>).

Question. The lowered standard that the EPA is proposing (between 60 and 70 ppb) is very close to levels of ozone that are found naturally in some regions of the country. For example, the ozone level at Big Bend National Park in southwest Texas, where there are no industrial facilities, is 71 ppb.

EPA's models have shown that decreasing human-made sources of ozone could actually lead to increased natural ozone in some areas. This happens because ozone formation is complex, and nitrogen oxides both form and destroy ozone. By controlling human sources of nitrogen dioxide to achieve lower ozone levels, many parts of the country may not meet current ozone standards solely because of naturally formed ozone.

Because the Clean Air Act only mandates that EPA *review not revise* the ozone standard, how is EPA taking into consideration the fact that there are parts of the country that have not and will not meet the 1997 standards, the 2008 standards, and any potential new standard offered by the Agency?

Answer. In the Policy Assessment, the EPA analyzed the influence of background ozone and concluded that areas with the highest background influence are locations

in the intermountain western United States. On most days, and at most locations, the background influence on observed ozone is expected to be much lower than the revised ozone NAAQS levels that have been proposed.

The EPA's improved modeling approaches allow us to more accurately simulate how ozone levels change in response to reducing nitrogen oxides. Nitrogen oxides (NO_x) cause both the formation and destruction of ozone. As a general rule, as NO_x emissions reductions occur, ozone values may increase in areas that tend to have much lower observed ozone concentrations, while higher ozone values would be expected to decrease. A more detailed discussion of this phenomenon can be found in the Policy Assessment (section 2.2). <http://www.epa.gov/ttn/naaqs/standards/ozone/data/20140829pa.pdf>

QUESTIONS SUBMITTED BY SENATOR JEFF MERKLEY

ELECTRONIC PRODUCT ENVIRONMENTAL ASSESSMENT TOOL (EPEAT)

Question. Why has the administration taken the action to specifically delete EPEAT?

Answer. The administration developed the Executive order (E.O.) to allow the use of multiple private-sector registries or methods that currently exist and any new ones that may be developed in the future, provided they meet the sustainable electronics provisions in the E.O.

Question. Can you reassure us that the Federal Government will continue to adhere to using EPEAT standards in its procurements?

Answer. Section 4 (e) of the new Executive order directed the Council on Environmental Quality to issue Implementing Instructions to provide more clarity for Federal purchasers on how to achieve compliance with the Executive order. These Instructions were issued on June 11, 2015, and are located here: https://www.whitehouse.gov/sites/default/files/docs/eo_13693_implementing_instructions_june_10_2015.pdf.

On Page 65 of the implementing instructions, EPEAT is identified as the only tool that currently meets the sustainability mandate specified in the E.O.

Question. There is currently no standard that evaluates environmentally sound lifecycles of electronics that has any comparable worldwide market share to EPEAT. Given this, why does the administration not continue to require EPEAT until an adequate alternate structure is in place?

Answer. EPEAT is identified in the implementing instructions for E.O. 13693 as the only tool that currently meets the sustainability mandate specified in the E.O.

Question. Can you assure me and the public that next steps in issuing implementing instructions and guidance will be transparent and open to public comment?

Answer. The E.O. Implementing Instructions were issued on June 11th, 2015 and are available at: https://www.whitehouse.gov/sites/default/files/docs/eo_13693_implementing_instructions_june_10_2015.pdf.

Within 90 days of the issuance of the Instructions, the EPA is required to provide updated guidance on recommended specifications, labels, and standards that designate environmentally preferable products and services, in consultation with the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ). EPA is developing interim recommendations to post on its Web site.

Question. I would urge the administration to make clear in the Executive order implementing instructions that are expected to be issued in the first week of May by Kate Brandt, the country's Federal Sustainability Officer, that EPEAT is an accepted compliance pathway for Federal agencies for electronics' procurement.

Answer. On Page 65 of the instructions, EPEAT is identified as the only tool that currently meets the sustainability mandate specified in the E.O.

Question. Finally, I ask the administration to ensure that EPA, Council on Environmental Quality, and the Office of Federal Sustainability promulgate guidance and directives to ensure that EPEAT is used in Federal procurements, and that future development of "Ecolabels" by the EPA also adheres to at least a minimum standard of EPEAT.

Answer. EPEAT is identified in the implementing instructions as the only tool that currently meets the sustainability mandate specified in the E.O. The application of the EPA Guidelines to the electronic products sector will allow a fair and objective process to evaluate any upcoming non-governmental eco-labels and standards addressing these products for consideration for use in Federal procurement.

SUBCOMMITTEE RECESS

Senator MURKOWSKI. Thank you. And with that, we stand adjourned.

[Whereupon, at 4:31 p.m., Wednesday, April 29, the subcommittee was recessed, to reconvene subject to the call of the Chair.]